

1 PUBLIC HEARING ON DOMESTIC VIOLENCE  
2 DRAFT GUIDELINES  
3 (IMPROVING THE ADMINISTRATION OF JUSTICE IN DOMESTIC  
4 VIOLENCE CASES IN THE CALIFORNIA TRIAL COURTS)  
5 \*\*\*\*\*  
6  
7 \*The Importance of Court and Community Leadership in  
8 Domestic Violence Cases  
9 \*Restraining Order Proceedings  
10 \*Enforcement of Orders for Relinquishment of Firearms  
11 \*Improving Practice in Criminal Domestic Violence Cases  
12 \*Public Testimony  
13 \*Concluding Remarks - Justice Kay  
14  
15 AT: Ronald Reagan State Building  
16 300 South Spring Street  
17 Los Angeles, California  
18 ON: Wednesday, March 14, 2007  
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23 Reported by:  
24 Lori Anastasiou,  
25 CSR No. 4345

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1 LOS ANGELES, CALIFORNIA  
2 WEDNESDAY, MARCH 14, 2007  
3 10:34 a.m.  
4 \*\*\*\*\*  
5  
6 JUSTICE KAY: Good morning. I'm Larry Kay,  
7 Retired Presiding Justice of the Division Four of the  
8 First District Court of Appeal and Chair of the Judicial  
9 Council's Domestic Violence Practice and Procedure Task  
10 Force.

11           On behalf of the task force I'd like to welcome  
12 all of you to our first public hearing. At this hearing  
13 we're seeking comments on our recently revised Draft  
14 Guidelines and Recommended Practices in Domestic Violence  
15 Cases. We will be holding a similar public hearing next  
16 Wednesday, March 21st in San Francisco.  
17           I'm pleased to be joined today by the following  
18 task force members. Starting on my far right I would like  
19 to introduce the following members:  
20           Mr. Alan Slater, Executive Officer of the Orange  
21 County Superior Court.  
22           The Honorable Jean Pfeiffer Leonard, Judge of the  
23 Riverside County Superior Court.  
24           The Honorable William A. MacLaughlin, Immediate  
25 and Past Presiding Judge of the Los Angeles Superior

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1 Court.  
2           The Honorable Katherine Feinstein, Judge of the  
3 San Francisco County Superior Court.  
4           The Honorable Deborah Andrews, Judge of the Los  
5 Angeles County Superior Court.  
6           The Honorable Mary Ann Grilli, Judge of the Santa  
7 Clara Superior Court and Chair of the Restraining Order  
8 Best Practices Working Group.  
9           To my left, skipping for the moment my colleague  
10 on my immediate left, the Honorable Jerilyn Borack, Judge  
11 of the Sacramento County Superior Court.  
12           The Honorable Jeffrey S. Bostwick, Judge of the  
13 San Diego County Superior Court.  
14           The Honorable Dean Stout, Presiding Judge of the  
15 Inyo County Superior Court.  
16           The Honorable Quentin L. Kopp, Judge of the San  
17 Mateo County Superior Court, Retired.  
18           Ms. Tressa S. Kentner, Executive Officer of the  
19 San Bernardino County Superior Court.  
20           These proceedings are being transcribed and  
21 recorded and will be available for the members of the task  
22 force who could not be present today.  
23           I would also like to introduce the staff of the  
24 Administrative Office of the Courts, Center for Families,  
25 Children & the Courts here with us today to assist in

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1 these proceedings.

2           Staff, please be recognized as I call your name.  
3           Ms. Tamara Abrams, Senior Attorney.  
4           Ms. Penny Davis, Senior Court Analyst.  
5           Mr. Juan Palomares, Administrator Coordinator.  
6           And Ms. Bobbie Welling to my immediate left,  
7   Supervising Attorney and lead staff to the task force.  
8           We're also pleased that Diane Nunn, Division  
9   Director of the Center for Families, Children & the Courts  
10   is here. Welcome, Diane.  
11          Finally we have Ms. Lynn Holton, public  
12   information officer.  
13          The domestic Violence Practice and Procedure Task  
14   Force is charged with recommending changes to improve  
15   court practice and procedures in cases involving domestic  
16   violence allegations in the following key areas:  
17          Court and community leadership;  
18          Restraining orders;  
19          Entry of those restraining orders into the  
20   Domestic Violence Restraining Order System, known as  
21   DVR0S, a database within the California Law Enforcement  
22   Telecommunications System known as CLETS;  
23          Firearms relinquishment;  
24          Criminal law procedures in domestic violence  
25   cases.

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1           As Chief Justice George stated when he initially  
2   appointed the task force, "Our goals are to ensure fair,  
3   expeditious and accessible justice for litigants in these  
4   critical cases and to promote both victim safety and  
5   perpetrator accountability."  
6          The task force charge includes as well a review  
7   and implementation, as appropriate, of court-related  
8   recommendations contained in the June 2005 report to the  
9   California Attorney General from the task force on Local  
10   Criminal Justice Response to Domestic Violence, entitled  
11   "Keeping the Promise: Victim Safety and batterer  
12   Accountability."  
13          The full charge of the task force and a complete  
14   listing of its members are contained in handouts  
15   available, along with copies of the agenda, on the  
16   registration table just outside the auditorium.  
17          Over the past 18 months the task force has  
18   developed a series of Draft Guidelines and Recommended  
19   Practices designed to address key issues. It is these  
20   proposals which are the subject of our hearing today.  
21   Speakers present include representatives from a wide array  
22   of justice system entities, each with a different  
23   perspective. It a guiding principle of the work of the  
24   task force that improving the way domestic violence cases  
25   are handled necessarily involves communication and

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1 collaboration among the various components of the system.  
2 We're very pleased today to have individuals with varied  
3 perspectives.

4 Before we turn to the speakers' comments, I'm  
5 pleased to introduce to you the Honorable J. Stephen  
6 Czuleger, who will deliver welcoming remarks. Judge  
7 Czuleger and I served on the Judicial Council together.  
8 As of January 1st of this year Judge Czuleger became the  
9 presiding judge of the Los Angeles County Superior Court.  
10 The Los Angeles courts handle by far, the highest number  
11 of domestic violence proceedings in the state.

12 Judge Czuleger...

13 HONORABLE CZULEGER: Thank you, Justice Kay.  
14 And on behalf of the Los Angeles Superior Court, let me  
15 welcome everyone here today that is attending what we  
16 believe is a very important event.

17 Domestic violence is a matter that affects  
18 everyone. As courts, as law enforcement, as social  
19 service providers, as family, as friends, as human beings,  
20 the plague that is domestic violence impacts us all.  
21 Domestic violence doesn't happen to someone else. It  
22 happens to each of us. And it affects both individuals  
23 and society at large. We are all at risk when any one is  
24 at risk.

25 Each of us here and others elsewhere are

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1 obligated to address the social infirmity that is domestic  
2 violence. Meetings like this help us to do just that.

3 Many important ideas will be discussed today.  
4 Many new ideas and best practices will surface. Many  
5 folks will be motivated to do more and better things.  
6 These are serious issues with serious ramifications and  
7 they need not remind those here from the courts that while  
8 the court must be a welcoming place, providing ease of  
9 access and navigation, the courts must never lose the  
10 public's perception of neutrality.

11 The courts must also be viewed as a completely  
12 fair environment for both sides to be heard and for help  
13 and justice to be offered. Only in this way will the  
14 courts be viewed with trustworthiness by the public. And  
15 only in this way will the problems surrounding domestic  
16 violence be handled in a credible fashion.

17           As just mentioned by Justice Kay, in the Los  
18 Angeles Superior Court we work hard to address the  
19 profound issues surrounding domestic violence. Last year  
20 alone we handled over 1700 applications for restraining  
21 orders under the Domestic Violence Protection Act.  
22 Hundreds and hundreds upon hundreds of more orders flow  
23 from dissolution actions heard throughout our many family  
24 law courts in Los Angeles. We expanded operations where  
25 restraining orders can be obtained in Los Angeles County.

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1   22 different courthouses throughout L.A. County are now  
2 able to offer access for restraining orders. Courts are  
3 now available in every one of our 12 districts.  
4           We have worked diligently to reduce what can be a  
5 complex chore to someone to a more manageable task that  
6 allows protection for the victims of abuse. We have also  
7 expanded domestic violence clinics and self-help centers  
8 throughout the County. Domestic violence victims can not  
9 only choose from any number of courthouses to obtain a  
10 suitable order, those same victims now have many locations  
11 to find resources in order to assist them in obtaining  
12 valid and enforceable orders.  
13           For all of this and more, our court is  
14 justifiably proud. But this is only a beginning for us  
15 and for you. More always can be done. As the result of  
16 the meetings like this, more will be done. You will learn  
17 and we will learn.  
18           The Los Angeles Superior Court and the entire  
19 judiciary in California, as we know, stands ready to help.  
20 My court joins you in recognizing the problem. And as I  
21 described it earlier, a plague on our society. A plague  
22 which must be effectively dealt with by us all.  
23           Thank you for your important work. Welcome and  
24 please enjoy the conference today.  
25           Thank you, Justice Kay.

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1           JUSTICE KAY: Thank you. Very well said, Judge  
2 Czuleger.  
3           I would now like to provide you with an overview  
4 of today's schedule.  
5           Our schedule today is as follows. The first  
6 segment of the hearing will be from 10:45 to 11:00 a.m.  
7 and will focus on the importance of court and community

8 leadership in domestic violence cases." This segment will  
9 be followed by restraining order proceedings, from 11:00  
10 a.m. to noon. We will then break for lunch at noon and  
11 reconvene promptly at 12:30. The next portion, on the  
12 enforcement of orders for relinquishment of firearms will  
13 be from 12:30 to 12:30. The session concerning ways to  
14 improve practice in criminal domestic violence cases will  
15 be from 1:40 to 3 p.m.

16 We will conclude the hearing by taking testimony  
17 from members of the public from 3:00 until 3:30, which  
18 depending on how many people have signed up, could be  
19 extended until 4 p.m.

20 When the public testimony is concluded, the  
21 hearing will be adjourned.

22 A word on public testimony. If you are  
23 interested in presenting testimony during the public input  
24 session and you've not already done so, please sign in on  
25 the sheet provided for this purpose at the registration

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1 table outside the auditorium. I will be calling on those  
2 who wish to present public testimony in the order in which  
3 you were signed in. We will make every effort to  
4 accommodate all witnesses who wish to speak to the task  
5 force during this public input session, but I may know  
6 need to limit the time allocated to each speaker based on  
7 the number of people who sign up. If we're not able to  
8 get to all of you before we have to adjourn, we encourage  
9 you to submit written testimony to the task force, which  
10 we will carefully consider as part of our evaluation on  
11 how to improve the administration of justice in domestic  
12 violence cases.

13 We will now turn to the substantive portion of  
14 our agenda. For each segment I will ask that all speakers  
15 come forward and sit in the reserve seats in the first row  
16 in order of their appearance.

17 I would like to call on our first two speakers  
18 with the component entitled "The importance of Court and  
19 Community Leadership in Domestic Violence Cases," Judge  
20 Nancy Wieben Stock and Mr. Casey Gwinn.

21 I'm pleased to introduce the Honorable Nancy  
22 Wieben Stock, Presiding Judge of the Superior Court of  
23 Orange County and Chair of the Judicial Council Trial  
24 Court Presiding Judges Advisory Committee. Judge Wieben  
25 Stock has had extensive experience in developing

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1 innovative programs to improve the administration of  
2 justice in domestic violence cases in her court.  
3 Mr. Casey Gwinn, San Diego's District Attorney's  
4 Office was the Founder of San Diego's Family Justice  
5 Center and the Chair of the Attorney General's Task Force  
6 on Local Criminal Justice Response to Domestic Violence,  
7 which I referred to earlier. He has been an advocate for  
8 improvements in the criminal domestic violence arena for  
9 many years.

10 Judge Wieben Stock, will you please begin.  
11 HONORABLE WIEBEN STOCK: Thank you.  
12 Justice Kay and members of the task force. It is  
13 a privilege to be here to speak on the topic of the  
14 importance of court and community leadership in domestic  
15 violence cases.

16 Your work is highly motivating to those who toil  
17 in the trenches. You should be gratified to know that as  
18 your work product is still out for review and public  
19 comment and before your final recommendations have been  
20 filed, these practices are already driving significant  
21 changes today in the way courts handle criminal and civil  
22 domestic violence matters. And yes, judicial leadership  
23 at the branchwide and local level is absolutely critical.

24 On paper judicial leadership in this arena should  
25 not be difficult. The branchwide, long-range six-year

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1 strategic plan, Justice in Focus, calls for strong working  
2 relationships with communities and justice partners,  
3 promoting effective programs, collaborating to further the  
4 interests of all court users, including children and  
5 families.

6 Many of your recommendations coalesce around the  
7 concept that families in this crisis need the support of a  
8 variety of resources and they need them early. In Orange  
9 County we have reached the point in the past few months  
10 where financial and resource commitments have been made,  
11 allowing us to direct to specialized, dedicated domestic  
12 violence courts, almost every single criminal and civil  
13 domestic violence case filed in the County. In this new  
14 environment, risk assessment, recovery and protective  
15 services and keen judicial oversight are all wrapped in  
16 the same package.

17 In the criminal arena, specialized domestic  
18 violence courts supported by County partners team together  
19 to provide alcohol and drug treatment for batterers and  
20 early intervention for personal empowerment and counseling  
21 for victims and their children.

22 Whereas significant County dollars have recently  
23 been dedicated to this model in the criminal domestic



24 violence area, the Orange County Superior Court has for  
25 almost a decade, applied the same intensive approach to

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1 civil domestic violence matters, without any of these  
2 external outside resources. We've done this by deploying  
3 full-time family court services investigators and  
4 interpreters provided to us through grant funding, to  
5 dedicated domestic violence specialty courts and have been  
6 able to achieve the same advantages, the same troika of  
7 early risk assessment, early offering of services and  
8 intelligent information going to dedicated, experienced  
9 and motivated specialty judicial officers.

10 One of the short list issues in the task force  
11 Report that's been identified is whether to require a  
12 victim to give notice prior to the obtaining of a civil  
13 domestic violence restraining order. However this issue  
14 may be resolved, the Orange County Superior Court's  
15 Domestic Violence Prevention Services Program described  
16 above provides all respondents with an early opportunity  
17 to tell investigators and the court, their side of the  
18 story and to provide names of witnesses and other evidence  
19 to assist investigators to help prepare for the Order to  
20 Show Cause. In this manner procedural fairness is ensured  
21 and the batterer's confidence in the justice step thereby  
22 enhanced.

23 Regardless of how we weigh in balance the prior  
24 notice issue, once that person is in court, they are  
25 embraced, they're given an opportunity to have their story

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16

1 investigated and prepared for the court.

2 I mentioned that the task force work has inspired  
3 immediate reforms in our system. The Orange County  
4 Superior Court has recently launched two pilot programs  
5 designed to follow best practices and avoid out-of-court  
6 confrontations between victim and batterer. The first  
7 innovation is an arrangement between our family court and  
8 the local Sheriff's Department, which upon the issuance of  
9 the DVPA TRO in the courtroom, this leads to a faxing of  
10 the TRO directly to the Sheriff for service, thus  
11 eliminating this particular step for the victim.

12 Now, in the future, our California case  
13 management systems will provide the interface to do this  
14 for us. With the push of a button we should be able to

15 have not only the exchange of data, but the actual  
16 document transmitted directly to our justice partner, who  
17 can then prepare it for service. In the meantime, to fill  
18 the gap we've made the commitment that our staff in the  
19 family court area will hand fax and hand feed 12-page or  
20 longer TROs into the fax machine, one by one, night after  
21 night, to get them over to the Sheriff's Office.  
22 The second change that we've initiated, again  
23 along the lines of the recommendations you've suggested,  
24 has to do with the establishment of our new off-site  
25 Family Justice Center in Anaheim. Our court has agreed to

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17

1 receive applications for Domestic Violence Protection Act  
2 TROs electronically and to permit video conferencing  
3 appearances by victims who have reported to the off-site  
4 location of the Anaheim City Family Justice Center, a  
5 non-court facility, operated through a collaborative of  
6 the Anaheim City and Anaheim Police Department with other  
7 County partners.  
8 The victim, while at that remote site, is allowed  
9 to electronically transmit the TRO application and with  
10 the use of video conferencing equipment, able to answer  
11 questions live and by the judicial officer in the  
12 courthouse 8 miles away, while the respondent does have  
13 the opportunity to appear personally at the courthouse,  
14 the old-fashioned way at the same time. So victims  
15 reporting to this off site-facility are given a variety of  
16 services, as I've described, allowed to seek redress  
17 remotely and electronically at the temporary restraining  
18 order stage, while the respondent who has in most  
19 instances been given notice of the proceeding, is  
20 reporting to the courthouse and showing up in person in  
21 the courtroom.  
22 Whereas the task force work product may soon  
23 establish that all of the court's collaborative  
24 strategies, combating the effects of domestic violence on  
25 children and families are appropriate, let me close with

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18

1 the idea that it has not always been so. Judicial  
2 initiative in this volatile area requires a vigilant  
3 observance of the duty of our courts to remain neutral and  
4 to appear to be fair and neutral. And thus, individual  
5 judicial officers who have been proactive in this field in

6 the past have often been held up to a high level of  
7 scrutiny, occasionally drawing criticism and in some cases  
8 discipline. Early judicial leaders in this field were  
9 sometimes castigated by their own colleagues, bringing to  
10 mind one judge years ago who was called a social worker in  
11 a robe by her colleagues.

12 It is my belief that in clearly defining the  
13 emerging trends, reliable research and best practices in  
14 this field, this task force work will serve to enhance  
15 public confidence in what might have been earlier  
16 perceived as excessive judicial oversight or lack thereof.  
17 If that were to be the only outcome of this Body's work, I  
18 think children and families in California will have  
19 benefitted greatly.

20 So I thank you on behalf of my court and on  
21 behalf of the presiding judges of the State of California  
22 for your efforts and I wish you luck and we anticipate  
23 with great delight, receiving the final recommendations  
24 from the Body.

25 Thank you very much.

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19

1 JUSTICE KAY: Well, we thank you. Very  
2 impressive and you've already given us a lot of additional  
3 things to think about. You've been congratulated on the  
4 steps you've taken in Orange County.

5 HONORABLE WIEBEN STOCK: Thank you.

6 JUSTICE KAY: Do any members of the task force  
7 have any questions of Judge Wieben Stock?

8 All right. Next we will hear from Mr. Casey  
9 Gwinn.

10 MR. GWINN: Good morning, Justice Kay and members  
11 of the task force. We're so honored to be here today.  
12 Thank you for your work.

13 As I read over the last week, your draft  
14 guidelines, it was very clear to me that you have all done  
15 a great work and Bobby and her staff have clearly done a  
16 great deal of work, and we greatly appreciate your  
17 commitment to all of this.

18 On behalf of the members of the Attorney  
19 General's Task Force that I was honored to chair, our 26  
20 members I know appreciate the commitment that this has  
21 been, after spending 18 months on the task force Report  
22 that was part of the genesis of this very group  
23 represented here today.

24 The court system is where the law keeps its  
25 promise of equal protection to victims of family violence

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1 and their kids. If not for the court system, we don't  
 2 have the ultimate just result. The best work of a police  
 3 officer, the best work of a prosecutor, the best work of a  
 4 community based advocate is not going to change the world  
 5 if the court doesn't back that up, with the best work of  
 6 the judiciary.

7 As I've watched over the years, it's been very  
 8 clear to me that the most successful work that we do is  
 9 when everything is the best. When we have the police  
 10 officer that cares, the civil attorney that cares, the  
 11 advocate that cares, the faith community advocate that  
 12 cares, the medical professional that cares, the judge that  
 13 cares, the probation officer that cares, the public  
 14 defender that cares. And when you see that happen in real  
 15 life, you know how well it works.

16 Those of you that have dabbled in or been  
 17 involved in specialized courts, as controversial as they  
 18 have been at times, know that when specialty courts work  
 19 well, they change the world. When they don't work well,  
 20 they're a nightmare. But when they work well, they change  
 21 the world.

22 And so part of our encouragement and challenge to  
 23 you is to keep advocating for that very reality in the  
 24 court system. Not the newest judge in the specialized  
 25 court. Not the untrained judge. Not the judge that no

1 one knows where to put perhaps. But the best judges in  
 2 the domestic violence courts and calendars. The most  
 3 experienced judges, the best trained, the ones that fully  
 4 understand the issues, those are the judges that need to  
 5 be there.

6 When we look at any systems we see that when the  
 7 police chief prioritizes family violence, then the best  
 8 people in that department want to be in family violence.  
 9 When the courts prioritize family violence, then the best  
 10 judges want to be in family violence. Because it matters  
 11 to the leadership of that court system. And so that  
 12 reality and challenge is certainly before us.

13 And when you look at the history of innovation --  
 14 Bobby and I were talking earlier about the gender bias  
 15 task force -- when we first started looking at this in the  
 16 1980s and the challenges we faced, looking at gender bias  
 17 in the courts back in the mid-1980s, we've come so far.  
 18 Such progress. Most of us here are products of so many  
 19 that have invested so much for so long in changing  
 20 systems. Courageous judges who did stand forward and say,  
 21 "This is about the administration of justice and we will

22 be involved with community initiatives; we will provide  
23 community leadership in our independent role as judges,  
24 even while maintaining that autonomy, even while  
25 maintaining that neutrality." Whether it's the Judicial

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22

1 Council, which has done such tremendous work over the last  
2 20 years, whether it's the State Judicial Institute,  
3 whether it's the National Council of Juvenile and Family  
4 Court Judges. If you go right down the list, you see  
5 incredibly courageous judges who have stepped up and  
6 provided leadership in partnership with those outside the  
7 justice system that have really truly produced change and  
8 set the standard.

9 And when we see it work, it works well. When  
10 batterers are truly held accountable in the criminal  
11 justice system, you see positive results. When batterers  
12 deserve to be cut a break and they deserve the opportunity  
13 to experience restoration and redemption and not suffer  
14 severe penal consequences, you often see the benefits of  
15 that too, when the judge fairly balances everything and  
16 decides which path the case should go down. But when  
17 there is accountability, the judge has the power to do  
18 transformative work.

19 I was thinking as I was preparing my remarks a  
20 few days ago, about sitting in the domestic violence  
21 court, the first specialized domestic violence court in  
22 San Diego County in the mid-1990s when Judge Bill Cannon  
23 was overseeing a domestic violence calendar. And it was a  
24 compliance calendar. Not delegated to a clerk. Not  
25 delegated off to someone in a back room. It was a judge.

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23

1 With all the power and the prestige of a judge. But a  
2 judge truly with somewhat of a philosophy of a social  
3 worker and a probation officer.

4 And as the judge heard his cases, a man came up  
5 to the podium and he had 19 reasons why he hadn't gone to  
6 his offenders' program. The dog died. His relatives had  
7 cancer. There had been hurricanes and natural disasters.  
8 All kinds of terrible things had happened that caused him  
9 not to be able to do what he needed to do to take  
10 responsibility for his violence and abuse.

11 And Judge Cannon listened. And you saw the  
12 bailiff move. And you knew that the click was going to

13 happen soon and he was going to spend 30 days in jail  
14 forthwith, because he was not taking responsibility, after  
15 having pled guilty to a criminal offense, for dealing with  
16 the issues that he got involved in, throwing in his life  
17 30 years earlier and it never had been dealt with.

18 Then the next man came to the podium after that  
19 man went to jail. And he had completed his entire  
20 batterers' intervention program. Gone to every class.  
21 Stood at the podium and said, "You know, Judge, it's my  
22 responsibility. I grew up in a home with violence and  
23 abuse and I became just like my dad. And I went down the  
24 road and I made the wrong choices and now I'm trying to  
25 break that cycle. And I've completed my class, by the

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24

1 grace of God, and I'm going to try to make different  
2 choices going forward and figuring out how to heal the  
3 relationship with my kids, because I've hurt them badly."

4 And Judge Cannon adjourned the court for a  
5 moment, got off the bench, walked down to the podium and  
6 shook his hand and said man to man, "I'm proud of you."  
7 And then he reconvened court and got back up to the bench  
8 and went to the next case.

9 He compromised nothing in his role, but he sent a  
10 message with court leadership to everybody in that  
11 courtroom. The next guy didn't have so many car accidents  
12 and health problems, because he realized that  
13 responsibility for his behavior was a standard that the  
14 court was going to require if he was going to avoid  
15 further penal consequences for not dealing with his  
16 violence and abuse.

17 And I've never forgotten that. I've never  
18 forgotten the standard that Judge Cannon set in those  
19 moments on the court.

20 We want to thank you for the themes that you've  
21 identified in this report related to court leadership.  
22 The general leadership of the courts, not just in the  
23 system but the overall leadership from the 10,000 foot  
24 elevation that emanates out from that. The working with  
25 justice system and community organizations and the

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1 discouraging of the use of temporary judges.

2 Judges without a question set the standard in a  
3 community. Today we regularly hear from clients of the

4 San Diego Family Justice Center in focus groups and access  
5 their reviews on a daily basis. We know when a judge has  
6 validated, proven -- proven documented incidents of family  
7 violence and they validated the victim's experience and  
8 she hasn't been revictimized, we know it. We hear it from  
9 the clients. And when she has, when she's embarrassed,  
10 when she's humiliated or when he is embarrassed or  
11 humiliated -- if he is the victim of domestic violence --  
12 we know, when clients come to our center and we can tell  
13 that they've been treated fairly and they feel it and  
14 they've experienced it and they've been welcomed into the  
15 system and we know when they haven't. We see the power of  
16 judges to transform lives and help break the cycle of  
17 family violence.

18 Today I also want to reference something that  
19 that Judge Stock just referenced. And that is this  
20 growing movement towards Family Justice Centers, not just  
21 in California but across America.

22 I do believe even in your draft guidelines lies  
23 this potential for a partnership between the large  
24 movement that actually began first in California in Santa  
25 Clara County, in San Jose. And Judge Grilli is quite

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1 familiar with it, and other judges in the Santa Clara  
2 court system are involved with the San Jose Family  
3 Violence Prevention Center. The notion of co-located  
4 services so that victims do not have to go from place to  
5 place to place to get help in our systems.

6 Battered women shelters began this work 35 years  
7 ago, saying "We need one place where victims can go."  
8 We're slowly expanding it. Shelters are still crucial,  
9 but now we're identifying other service areas and  
10 locations where victims can go in one-stop shop centers,  
11 so that we don't have to put all those social service  
12 agencies in your courthouse, because you don't have room  
13 for them.

14 You can create the categorical referral system,  
15 but the categorical referral system does not work for most  
16 victims of trauma, when you say "Go to these 15 places to  
17 get all the help you need." Just like it doesn't work  
18 very well for offenders, when you say "Go here for this,  
19 and there for that and there for this and there for that,"  
20 and they can barely find a parking place to get into the  
21 courtroom that day, let alone figure out how to go to all  
22 those places in the next three months or risk going to  
23 jail.

24 And we're beginning to look more and more at  
25 this. Not just in California where we now have 7 family

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1 justice centers either in operation or about to open. We  
2 have another 15 in planning now in various parts of the  
3 state. But ways that we can partner, as we do in San  
4 Diego, between the Superior Court and a co-located center  
5 where we have 27 agencies on-site now in one place,  
6 serving 1,100 families a month.

7 Going down that road, a video teleconferencing --  
8 not yet, but almost -- but electronic filing of  
9 restraining orders, where a lawyer prepares the  
10 application, a medical exam is done, a safety plan is  
11 done, a clinical assessment is done, and all of it then is  
12 electronically filed with the court for the actual  
13 issuance of the restraining order. And the client's  
14 receiving breakfast and lunch at the Family Justice Center  
15 and she's safe. She's not confronting her offender in the  
16 elevator of the courthouse or outside in the parking lot.

17 That kind of opportunity for partnership, clearly  
18 we would argue is part of the future for all of us, where  
19 we depend on the great work of Center for Community  
20 Solutions Legal Clinic that you'll be hearing from  
21 shortly, from Steve Allen and our volunteer lawyers  
22 program. We now have six lawyers, either full or  
23 parttime, working through our center so that they're able  
24 to provide those services to clients that doesn't have to  
25 be in the court system.

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1 Recently we've begun to document this. We've  
2 documented it in a new book that I have no financial  
3 connection to -- we've donated all the proceeds -- but  
4 it's called Hope for Hurting Families. And it's a book  
5 that documents the 23,000 clients we've served so far in  
6 the San Diego Family Justice Center. Not a death. Not a  
7 single death in 23,000 clients. Everybody with safety  
8 plans. Everybody with wraparound services. Many referred  
9 from the court system. Because they needed one place for  
10 them to go for help and assistance.

11 And we're learning that victims don't recant when  
12 they're wrapped in safety and support. They don't recant  
13 in battered women's shelters. And they don't recant when  
14 they're safe and when their children are safe and when  
15 they have resources immediately available to them.

16 I think the other thing that I'll mention in  
17 that, and I do think it's the future, and it's a  
18 partnership between the incredible work you've done and  
19 what we need to be doing, and that is we need an analog to



20 this for offenders. What's the wraparound service model  
21 for offenders who aren't in custody? Because 90 percent  
22 of domestic violence cases in California and in this  
23 nation are handled as misdemeanors on the criminal side.  
24 And of course on the civil side they're not going to jail.  
25 They're out in the community. But where do they go?

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1 Where is the one place that offenders go? I smirk and say  
2 we call that jail.  
3 Jail doesn't serve that purpose for most  
4 offenders and it's not going to provide that wraparound  
5 support to deal with the parenting issues, drug and  
6 alcohol issues, parenting after violence, job training.  
7 That co-located wraparound service model does not yet  
8 exist anywhere in America. We're focused on the  
9 batterers' program. But we need to be focused on a  
10 holistic approach to offenders too, because we all know  
11 that in America we raise our criminals at home. And the  
12 vast majority of these offenders grew up in violent and  
13 abusive homes. The vast majority of prisoners in prisons  
14 in California and in this country, for every crime the  
15 majority of them grew up in homes with drugs and alcohol  
16 and violence. The vast majority. As Senator Joe Biden  
17 said to me last fall, "They have two things in common.  
18 They can't read and they grew up in homes with violence  
19 and abuse."  
20 And in order to recognize that, if we recognize  
21 that, we can then begin to look at that wraparound model,  
22 not simply court orders to go to all these place, but  
23 creating with judicial support and leadership, co-located  
24 service centers for women, men and children.  
25 Finally, I want to thank you for the commitment

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1 that the Chief Justice has made and now that you have made  
2 a reality. And that is, when we issued the Attorney  
3 General's Report, the Chief Justice stood next to the  
4 Attorney General, Bill Lockyer and to myself in San  
5 Francisco and said, "I pledge that the court system in  
6 California will be different because you've identified  
7 real issues, not just judicial issues."  
8 We identified issues everywhere. 20 years of  
9 laws that didn't create full social change or critical  
10 mass and social change theories. Problems in the criminal

11 justice system. Problems with police departments.  
12 Problems with prosecutors. Problems in the advocacy  
13 community. Problems everywhere. And the court was a  
14 piece of that. And the Chief Justice stood with us and  
15 said, "We will take responsibility for our pieces of this.  
16 And we will work together."

17 And today you've made that pledge a reality.  
18 You've made his leadership, effective leadership very  
19 evident in your commitment to what is in these guidelines.

20 My only request, which is true for all of us that  
21 have been on these task forces is, we don't want this to  
22 become a shelf document. This needs to become a living  
23 document that will continually evolve and emerge, just  
24 like we've been evolving in this work with the Judicial  
25 Council for over 20 years now. We can't stop. Even with

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1 these guidelines. Because five years from now hopefully  
2 we'll still be evolving, as we move forward, to figure out  
3 effective ways to protect families and break that cycle of  
4 family violence.

5 So on behalf of our Family Justice Center team,  
6 the District Attorney of San Diego County and our AG's  
7 task force, I want to thank you all. This is not just  
8 about those people who have this problem. I too am a  
9 generation away from family violence, with a dad who grew  
10 up in an abusive home at the hands of my grandfather. And  
11 a grandmother who took it to her grave, what she  
12 experienced with my grandfather.

13 So I'm very mindful of the fact that it's not  
14 that ethnic group or that socioeconomic group. It's us.  
15 It's our culture, our society. And the judiciary is in  
16 many ways, a place where the standards of society get set.  
17 What we will accept and what we won't accept, what we will  
18 tolerate and what we won't tolerate. And together we will  
19 continue to make progress in this area. We're getting  
20 there. We have a long ways to go, but we're getting  
21 there.

22 And I want to thank you all for your leadership.  
23 I appreciate it. Thank you very much.

24 JUSTICE KAY: Thank you, Mr. Gwinn.

25 Anyone have any questions for Mr. Gwinn at this

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1 point?

2 All right. Our next session will deal with  
3 restraining orders. I would now like to call on the  
4 speakers for that segment.  
5 Will the following speakers please come forward.  
6 Mr. Steve Allen.  
7 Mr. Steve Allen is the Director of Legal Services  
8 for the Center of Community Solutions in San Diego. He  
9 has years of experience handling domestic violence issues  
10 for low income clients. Mr. Allen will be followed by  
11 Miss Karen Cooper, Executive Director of Family Services  
12 of Tulare County. Thank you for coming such a long  
13 distance.  
14 Miss Cooper is also Chair of the Board of the  
15 California Partnership to End Domestic Violence, a  
16 California statewide domestic violence coalition. She's  
17 also the Governor's Appointee to the State Domestic  
18 Violence Advisory Council.  
19 Following Miss Cooper will be Miss Cheryl Segal,  
20 an attorney from the Harriet Buhai Center for Family Law,  
21 founded in 1982 and one of the largest providers of family  
22 law and domestic violence assistance for low income  
23 persons in Los Angeles.  
24 Finally, Miss Dianna Gould-Saltman, a Los Angeles  
25 family law practitioner and representative from the Los

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1 Angeles County Bar Association, Family Law section.  
2 Mr. Allen.  
3 MR. ALLEN: Justice Kay, thank you very much for  
4 the opportunity to speak here, and members of the task  
5 force.  
6 Access to justice is access to safety. And I  
7 rode up with Casey this morning and I was reminded of the  
8 passion that I have for this work and I think it's  
9 incumbent on all of us to have some compassion for victims  
10 of domestic and sexual violence.  
11 I've been working at Center for Community  
12 Solutions for 10 years. I have a very unique law  
13 practice. I don't think there's very many other men in  
14 the State of California, let alone the United States -- or  
15 the world for that matter -- that work in a rape crisis  
16 center, work in an agency that has a shelter for battered  
17 women and their children, among a host of other services.  
18 And it's been a truly transformative experience for me.  
19 It's changed me as a human being. I like to think it's  
20 made me a better human being. And I hope to try to bring  
21 a little bit of that unique prospective to the task force  
22 today.  
23 And as an officer of the court I take very  
24 seriously, the neutrality of the court that the court must  
25 maintain in deciding a controversy. But I'm also reminded

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1 that in the 10 years that I've been doing this kind of  
2 work, I've had three clients murdered. And of course  
3 that's terribly tragic to share. And it feeds the passion  
4 that I have to try to eliminate that. I don't know that  
5 I'll be at Center for Community Solutions for another 10  
6 years. But if I am, I hope to be able to say that we've  
7 had zero clients die, who have sought services.

8 There's also a lot of good stories that come out  
9 of providing services to victims of domestic and sexual  
10 violence. And it's transformative for them in terms of  
11 changing their lives, giving them hope and giving them a  
12 chance, as it has been for me personally working in this  
13 environment and offering that hope. And all of you and  
14 really all of us are gatekeepers in that journey from  
15 victim to survivor to an individual who can thrive and  
16 live in a home that's safe and free from violence.

17 I'm going to address a number of issues that  
18 touch on the restraining order component, and then also  
19 some that are tangential to that.

20 I want to just follow up and echo what Casey  
21 Gwinn had said regarding the importance of continuing  
22 community leadership.

23 In San Diego County we have four different  
24 venues, four different courthouses and in two of those  
25 courthouses we have existing -- what we call --

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1 stakeholder meetings, and I want to thank the Honorable  
2 Jeffrey Bostwick for some leadership in that regard. That  
3 started here some three years ago or so, your honor, and  
4 it's still going strong. And when you see all of the  
5 links in the chain come together at the same place at the  
6 same time -- you have sheriffs who are either involved in  
7 enforcing restraining orders or serving the restraining  
8 orders; you have sheriffs, individuals who are entering  
9 the restraining orders into CLETS; when you have court  
10 clerks sitting at the same table at the same time as the  
11 bench officers, victim advocates -- you see a synergy that  
12 comes together that otherwise wouldn't happen and doesn't  
13 happen when we're all operating in our own silos and don't  
14 get to talk to anybody else, except for the link in the  
15 chain that's right next to us.

16 And I'd like to echo the -- well, first of all,

17 what Casey said, and also the sentiment of our Chief  
18 Justice, Ronald George, and continuing those types of task  
19 forces and stakeholder meetings in the communities and the  
20 courthouses. In San Diego we've taken that. We have two  
21 existing ones and under the leadership of State Senator,  
22 Chris Kehoe, we're looking at the Attorney General's  
23 Report and implementing some recommendations from that.  
24 That makes sense in our particular county and in our  
25 particular venue. And I want to thank her for her

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1 leadership in helping us take that document and keeping  
2 the promise and taking it off the shelf and making it a  
3 living document that's creating change, substantive change  
4 and providing healing for victims and their families.

5 With respect to temporary restraining orders,  
6 clearly the legislative intent is to prevent domestic  
7 violence. The threshold for issuing them is rather low.  
8 Past act or acts of abuse. There should be few denials,  
9 in my view of that law. And I think there's some  
10 importance in talking about there shouldn't be any time  
11 restriction between the most recent event of abuse or  
12 violence and the issuance of the order.

13 I know that it might be beyond the purview of  
14 this task force -- perhaps it's something that the  
15 legislature should look at -- and the legislatures of a  
16 number of states have looked at it and have clearly said  
17 in their equivalent to the Domestic Violence Prevention  
18 Act, that the time between the most recent incident of  
19 abuse or violence and the time of filing for the order  
20 shall be of no consequence. And that goes to the  
21 importance of having community based organizations, civil  
22 legal assistance providers in our communities who can  
23 adequately explain if there's been an incident a year, six  
24 months ago, adequately explain in the declaration why  
25 there is a gap. And in some, oftentimes what it comes

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1 down to is simply the effective development of an escape  
2 or safety plan.

3 If it's denied, I submit that it should be left  
4 to the option of the petitioner whether or not there  
5 should be a hearing on the permanent order or not. I  
6 think there could be some delicacy, some danger involved  
7 in giving a hearing, serving the other side but without

8 having that protective order in place. I have some  
9 concerns about that.

10 I think it's important to increase the use of  
11 advocates in the courtroom for protected parties who seek  
12 dismissal of a restraining order. Some individuals have  
13 suggested that this could be a court function. Of course  
14 that will require some funding. I think in the meantime  
15 community based organizations can be an excellent resource  
16 for victims. And it also gives them an opportunity to  
17 access other assistance, whether it be counseling or  
18 shelter. And if they do want to reunify with the  
19 perpetrator, the restrained party and the restraining  
20 order is dismissed, at least then they have another place  
21 that they can go to in the event that there's problems in  
22 the future.

23 It probably would be helpful -- everybody knows  
24 that abuse of -- animal abuse can be a precursor to or an  
25 actual part of domestic violence in a domestic violence

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1 relationship -- and it might be helpful and there's some  
2 pending legislation dealing with this, looking at adding  
3 protection of pets on the Judicial Council forms.

4 It would also be extremely helpful so that no  
5 protected party ever leave the courtroom without an actual  
6 hard copy of the order, to make service of the restraining  
7 order after hearing and the preparation of the restraining  
8 order after hearing a court function. Clerks can do that.  
9 Or facilitators, family law facilitators could do that.  
10 Or with proper funding and some planning, civil legal  
11 service providers or community based organizations that  
12 have a legal department could provide that function so  
13 that no victim would ever leave the courtroom without that  
14 restraining order. And then at the same time it would  
15 also be timely entered into the California Law Enforcement  
16 Telecommunications System.

17 It would be helpful to use the coercive powers of  
18 civil courts. This is being done some now in criminal  
19 court, but I think it would also be very helpful in civil  
20 court to use of course the powers of the court to get guns  
21 from individuals who are subject to restraining orders.  
22 We have an innovative pilot program that we're developing  
23 in San Diego, growing out of this group that was  
24 spearheaded by Senator Kehoe, looking at some innovative  
25 projects to try to get guns from individuals who are

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1 subject to the restraining orders. And one aspect of it  
2 that may be particularly helpful is this Special Needs  
3 warrant that's been tried and tested in New Jersey and the  
4 appellate system there, where on the testimony of the  
5 protected party, the court is able to issue a warrant and  
6 actually allow law enforcement to retrieve guns from an  
7 individual subject to the restraining order.

8 I think it would be extremely helpful to have 52-  
9 week batterer's treatment as a part of the civil  
10 restraining order. We see it all the time with some  
11 regularity in criminal court of course. Rarely -- at  
12 least in my County, San Diego County -- see it in the  
13 civil restraining order context. And this goes along with  
14 what Casey Gwinn had said about providing wraparound  
15 services for perpetrators of domestic violence. This  
16 wouldn't necessarily be individuals who are convicted of a  
17 crime, but in particular where there's children involved,  
18 we want to make sure that those children stay safe, give  
19 the individual who's subject to the restraining order an  
20 opportunity to slowly but surely integrate with the family  
21 and safely integrate the children with the person subject  
22 to the restraining order.

23 I believe case law and the codes support my  
24 contention that the granting of a restraining order after  
25 hearing equals a finding. And where there's been a

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1 finding, of course family Code Section 3044 should be  
2 invoked. Family Code Section 3044, creating a rough,  
3 rebuttable presumption against granting custody to the  
4 person who's the perpetrator of the domestic violence  
5 against the protected individual or the children of the  
6 couple. And it might be helpful to continue some training  
7 in that regard.

8 And also to possibly change the domestic violence  
9 form DV-130. You can put it in there in a paragraph, 4 or  
10 5 or wherever it would appropriately fit and just simply  
11 say, "The Court hereby finds that the restrained party has  
12 perpetrated domestic violence against the protected  
13 party."

14 There's been some reluctance by prosecuting  
15 authorities to prosecute criminal temporary restraining  
16 order or permanent restraining order violations. And I  
17 know that would fall under the purview of prosecutors, but  
18 I have witnessed some judicial reluctance, if you will, to  
19 proceed with restraining order violations. Nobody's going  
20 to hit a home run with these, and nobody's going to go to  
21 a jail for a year or get a million dollar fine, but we've  
22 got to give some teeth to restraining orders. Otherwise  
23 they truly are the proverbial "just a piece of paper."

24 And if we can get an individual convicted -- particularly  
25 in cases where there's no proof problems -- and

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1 unfortunately I've seen a number of those cases where they  
2 just simply aren't prosecuted. Get the individual on  
3 summary probation. At least we can start there and then  
4 if there's another problem, you can violate the probation  
5 and do the -- another case, a violation of the restraining  
6 order again.

7           There needs to be more effective communications  
8 between civil and criminal court. And I think there are  
9 some movements in that regard happening currently. It  
10 would be ideal if these could happen in real or near  
11 realtime. The practices that I heard about in Orange  
12 County sound very promising. We're currently doing some  
13 fax filing in San Diego. The video conferencing is also  
14 an extremely important project that I think should be  
15 followed up on.

16           And then finally, kind of addressing to a certain  
17 extent what Casey Gwinn had talked about. It's something  
18 that's been very dear to my job and my profession and  
19 position at Center for Community Solutions -- I guess I  
20 had been there for about six months or so -- and the issue  
21 of men's violence against women is really what it boils  
22 down to. It's not exclusively that, of course. But any  
23 time I have an opportunity to share on the subject of  
24 getting more men involved in preventing men's violence  
25 against women, I take that opportunity. And if I'm out of

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1 line doing it in front of this task force, I apologize for  
2 that. But there really truly in my estimation is a gender  
3 component to this, and it's important for everybody to be  
4 involved. I mean, the pure math alone tells us that if  
5 it's only women that are doing this kind of work, well,  
6 the math isn't going to work. We need to have everybody  
7 involved. Because this is an issue that affects  
8 everybody.

9           So I humbly thank you again for the opportunity  
10 to present my testimony here today.

11           Thank you.

12           JUSTICE KAY: Thank you, Mr. Allen.

13           Any questions for Mr. Allen?

14           Yes, Judge Kopp?



15 HONORABLE KOPP: I think I have two. One is on  
16 the TRO. You made some comment about sensitivity, I  
17 thought, concerning a hearing if the court's inclined to  
18 deny.  
19 MR. ALLEN: Yes, sir.  
20 HONORABLE KOPP: The hearing would involve ex  
21 parte hearing or would it involve the respondent?  
22 MR. ALLEN: Let me clarify that, your honor.  
23 In a situation where a petitioner seeks a  
24 temporary restraining order but is denied at the ex parte  
25 level, the temporary restraining order -- I know in one of

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1 the recommendations it was suggested that -- and I saw the  
2 word "must" in there -- that the court must set a hearing.  
3 I'd like to talk about that a little bit more and probably  
4 time won't permit that right here and now, but I'm a  
5 little bit concerned about an individual being granted the  
6 hearing, but I would like to leave it up to the option of  
7 the petitioner. I think that's really the better way to  
8 approach this. Because if you go -- if the individual  
9 goes in, seeking the protective order and it's denied and  
10 now he's -- I'll say "he" in this particular instance --  
11 the other party, the respondent is going to be served but  
12 does not have the protective order to control his  
13 behavior, if you will, vis-a-vis the protected party  
14 cannot call on law enforcement and say, you know, "He's  
15 trying to get me. Please come and arrest him." There is  
16 no restraining order to enforce.

17 HONORABLE KOPP: All right. I think I  
18 understand.

19 The other is on the protection of pets. I admit  
20 innocence or maybe naivety, but describe the scope and the  
21 vast necessary of the problem if you would a little more  
22 for me.

23 MR. ALLEN: Well, I'm not trying to suggest that  
24 this would be a dramatic paradigm shift in how society  
25 deals with domestic violence, but it's common knowledge --

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1 and I certainly have seen many victims over the years  
2 complain about the abuse started with abuse of my pet.  
3 Like, "He abused my cat" or "He abused my dog." And we'll  
4 use that as another method of power and control. That  
5 being the basis of much domestic violence. Well, maybe

6 I'm smart enough of a batterer where I won't physically  
7 abuse you, but I can control your behavior by doing  
8 something that you don't like to your pet.  
9 HONORABLE KOPP: Thank you.  
10 MR. ALLEN: Thank you.  
11 JUSTICE KAY: Thank you again, Mr. Allen.  
12 All right. Miss Karen Cooper.  
13 MISS COOPER: Thank you.  
14 Actually before I begin, given the previous  
15 remarks, I feel like I must disclose that I am a social  
16 worker. Probably the only one in the room. And also I  
17 have put an awful lot of goldfish down my disposal by  
18 mistake, so I'm feeling a little nervous. But most of the  
19 time I am Executive Director of Family Services Agency in  
20 Tulare County, just centered in Visalia, between Fresno  
21 and Bakersfield.  
22 Many domestic violence and community based  
23 victims services agencies in our rural counties are multi-  
24 service agencies. They do attempt to do our own version  
25 of wraparound services, simply because we're smaller

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1 counties.  
2 So at my agency, for example, we're a DV agency;  
3 we're a sexual assault center; we have a supervised  
4 visitation center. We're the largest BIP, Batterers  
5 Intervention Program in our county. We do therapeutic  
6 reunification. We have a family counseling center. We  
7 have a children's counseling center for children exposed  
8 to violence. And numerous other services. We are active  
9 collaborators in our local DV Council and at the state  
10 level we belong to the California Association of Batterers  
11 Treatment Program and to the California Partnership to End  
12 Domestic Violence, to which I was elected as the regional  
13 representative to the board for the 13 counties in the  
14 central valley.  
15 So my remarks today will primarily reflect my  
16 experience and knowledge coming from our great rural part  
17 of our state in the valley.  
18 I do also wish to thank Chief Justice George and  
19 Justice Kay and each of you for the amount of time and  
20 work you're putting into this task force and your  
21 commitment to fair and expedient and accessible justice in  
22 all domestic violence cases.  
23 I've been asked to speak to the category of  
24 restraining orders, but like my predecessor, I can't help  
25 but want to follow up on Judge Stock's and Mr. Gwinn's

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1 testimony about judicial leadership. It just so critical.  
2 And I think that you'll hear this over and over in all of  
3 the speakers, no matter which category they were asked to  
4 stay within the boundaries of.  
5 I surveyed all 13 of the counties that I  
6 represent as a regional representative. And without fail,  
7 every single one of them stated that many of the  
8 recommendations relating to restraining orders,  
9 particularly, were mostly in place or were at least open  
10 for discussion in those counties where the presiding court  
11 judge particularly and the court administrator promote  
12 three things:  
13 Judicial training, number 1, in the dynamics as  
14 well as any applicable new laws related to domestic  
15 violence.  
16 Number 2, where they promote judicial  
17 participation in systems evaluation meetings with other  
18 judicial system entities or DV Council.  
19 And 3, where they support, if possible, domestic  
20 violence courts or compliance calendars.  
21 If the State Judicial Council did nothing but  
22 focus on court leadership, I believe that would be the  
23 catalyst for the rest of the recommendations and proposed  
24 practices in the manual.  
25 A good example of that is Merced County, where

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1 collaboration between the court and the community based  
2 domestic violence agency, which is called A Woman's Place,  
3 has resulted in that agency receiving a copy of every EPO  
4 that's issued in their county. And the courts have  
5 created a password for The Woman's Place, advocates to  
6 access the court's restraining order registry.  
7 Merced County is also independently on their own  
8 seeking resources to provide the same access to the  
9 registry for officers in the field, given that sometimes  
10 the CLETS information doesn't have as much detailed  
11 information as that that's in the actual order that they  
12 can access on the registry.  
13 Many other central California -- and really all  
14 California counties -- have made progress in the last  
15 decade, especially when there has been encouragement or  
16 have been spurred on by the state. And there are few  
17 challenges, really probably many challenges that remain,  
18 but I'd like to speak to just one or two.  
19 One item that was noted in our region was  
20 Recommendation No. 14 that speaks to the preparation and  
21 provision of the restraining order.

22           Most counties do report that the TROs are issued  
23   in a timely fashion, but there's quite a bit of concern  
24   with the time delays that take place in orders after  
25   hearing. In our cases typically we have less bench

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1   officers. Sometimes we may only have one courthouse that  
2   has to serve the entire county. Some of our counties are  
3   as large as, you know, Connecticut or Pennsylvania almost,  
4   but they're very large counties, even though half of them  
5   are national parks but still people live there and they  
6   have to come down to the courthouse. If a judge goes into  
7   trial or is on vacation, sometimes a month or more lapses  
8   before those orders are received. And the average is  
9   usually about a week, but that can even be problematic in  
10   terms of enforcement by -- follow-up by law enforcement  
11   agencies.

12           The larger issue that I want to spend the rest of  
13   my time on addresses both Recommendation No. 29  
14   and Recommendation -- which relates to self-represented  
15   litigants, and Recommendation No. 40, non-CLETS  
16   restraining orders. In my mind these two recommendations,  
17   the content of them is linked, and they really were the  
18   priority concern in our area.

19           Again, where committed leadership as I defined it  
20   previously exists, we don't really hear -- I didn't hear  
21   reports of non-CLETS, quote, restraining orders emerge.  
22   Where that type of leadership was lacking, judges often  
23   interpreted the law in a manner that effectively silenced  
24   the voice of victims in their courtrooms.

25           In the poor counties of the San Joaquin Valley,

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1   most petitioners are self represented. Some judicial  
2   officers do not prompt or initiate appropriate questioning  
3   of these litigants to determine and clarify facts.  
4   Non-CLETS restraining orders are ordered by some judges  
5   routinely if there is any indication of any violent  
6   behavior on the part of the petitioner, without making  
7   detailed findings of facts supporting that both parties  
8   are primary aggressors.

9           And it's common in these instances for the  
10   judicial officer to ask the petitioner if she will  
11   stipulate to a non-CLETS restraining order. You know,  
12   self-represented litigants, if not accompanied by an

13 advocate -- and sometimes even if they are -- are  
14 typically uninformed, afraid, fearful of court procedure  
15 and above all, they come with the expectation that the  
16 judge is going to act to make them safe.

17         So when they're asked if they will agree to a  
18 non-CLETS order, which they have no idea what that means,  
19 they respond "Okay." That lack of inquiry, from some  
20 points of view, can amount to a denial of relief. Legal  
21 advocates at restraining order clinics have begun -- and  
22 also at community based domestic violence programs that  
23 have legal advocates -- have begun to warn petitioners not  
24 to accept non-CLETS orders because they are unenforceable,  
25 but not all petitioners use these resources. Many

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1 petitioners thus leave the courtroom believing that they  
2 were successful in obtaining an enforceable order, because  
3 of not really understanding the difference.

4         We have had -- well, this is not common -- we've  
5 had judges in our county who have asked pro per  
6 petitioners to stipulate to a non-CLETS order because the  
7 individual who would have been restrained is interested in  
8 becoming a correctional officer. Or because he is an avid  
9 hunter just like the judge. Or many other people in our  
10 counties.

11         The frequency and volume of non-CLETS orders may  
12 rise when the order protection request is within the  
13 context of a contested custody or divorce hearing. It's a  
14 very difficult calendar, as you know, and some judges  
15 routinely conclude or have had experience that leads them  
16 to conclude that what is before them, what they're hearing  
17 about is just what I guess we can call bad divorce  
18 behavior as opposed to domestic violence. And therefore,  
19 they are more likely to issue a non-CLETS order. This may  
20 be accurate in some cases. But the reasoning of the Task  
21 Force -- I mean, what all of you came to when you made the  
22 Recommendation No. 40 -- to ensure that all requests for  
23 restraining orders that are approved are such that they  
24 can be entered into CLETS and DVROS. That was based on  
25 excellent -- it was an excellent choice for a

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1 recommendation and it's based on sound logic.

2         This practice should remain, I believe, the  
3 default remedy under -- unless all of the prerequisites of

4 Family Code Section 6305 are really fully met with  
5 bindings.  
6 The redress of domestic violence restraining  
7 orders was very hard earned. And it should not be denied  
8 without comprehensive inquiry on a case by case basis.  
9 So thank you very much for allowing me to speak.  
10 JUSTICE KAY: Thank you.  
11 Are there any questions?  
12 All right. Miss Cheryl Segal here.  
13 MS. SEGAL: Good morning. I think I'm not used  
14 to addressing so many judicial officers at one time, it's  
15 quite overcoming.  
16 I'm here to speak to you on behalf of the  
17 Harriett Buhai Center. First and foremost, I want to  
18 thank you all for inviting the Harriett Buhai Center for  
19 being here. We're very honored to speak to you today.  
20 By way of background for just a second, my job at  
21 the Harriett Buhai Center is entirely devoted to working  
22 with domestic violence victims who are in poverty. I  
23 generally meet with these victims at a shelter or at a  
24 family crisis center, outpatient facility for the first  
25 time. And they're generally in the midst of crisis when I

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1 meet with them.  
2 I will be commenting today on six proposals. And  
3 I'm going to be taking them from the bound booklet as  
4 opposed to the short list. And I will try to go in order.  
5 The first guideline that I would like to comment  
6 on is regarding removal of barriers. I agree with this  
7 guideline, that we should reduce barriers to court access.  
8 I'd like to comment on one barrier. I believe one barrier  
9 to obtaining a restraining order is the lengthy forms.  
10 I'm not commenting on the language of the DVPA forms, but  
11 I'm commenting on the length.  
12 There are approximately 46 pages of DVPA forms.  
13 My clients tell me that they are quite overwhelmed when  
14 they attempt to do these on their own, prior to working  
15 with me. If they attempt to fill these forms out on their  
16 own, they tell me it's very overwhelming for them. I've  
17 heard the same thing from the case managers, and I've  
18 actually seen new lawyers struggling with the length of  
19 the forms.  
20 I'm concerned particularly with the  
21 repetitiveness of the forms and whether or not they can  
22 become more concise in the future.  
23 Moving on to Guideline No 3, regarding  
24 information and resources for the parties.  
25 Of course I believe the courts should provide

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1 resources for the parties. I think one important area is  
2 immigration information. It's desperately needed. My  
3 clients are totally in the dark when it comes to  
4 immigration information. And my undocumented clients live  
5 in fear that their batterer is going to call the INS on  
6 them. And they really know nothing about VAWA or UVISA,  
7 whether or not they may be eligible. I don't think they  
8 know where to turn, who they can rely on with regard to  
9 immigration issues, what attorney they can trust, what  
10 services they can trust. So I think with regard to  
11 referrals, immigration information is badly needed.

12 With regard to self-help centers, I don't agree  
13 with giving referrals to self-help centers with regard to  
14 giving help to domestic violence applications. And I'd  
15 also like to cross-reference Guideline No. 5, because I  
16 think it's totally related in this area. It's talking  
17 about funding to self-help centers.

18 I don't believe that funding should be given to  
19 self-help centers with regard to assisting with domestic  
20 violence applications.

21 And the reason I don't think that funding or  
22 referral should be given to self-help centers is because I  
23 believe that the domestic violence restraining orders are  
24 just too complex to handle at self-help centers. I don't  
25 think we should be dealing with matters of life and death

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1 at self-help centers. I think self-help centers are  
2 wonderful and helpful in many areas. But not in the area  
3 of domestic violence restraining orders. I think there is  
4 a real need to write persuasive in a coherent declaration  
5 and I don't know that a self-help center is enough to  
6 handle that. And truthfully, it is the opinion of the  
7 entire Harriett Buhai Center that we should not be  
8 referring people to self-help centers for domestic  
9 violence restraining orders.

10 And I'll tell you something. We have just had a  
11 client come in our door about a week ago. She was very  
12 upset. She had gone to a branch court and a self-help  
13 center at the court had helped her with the restraining  
14 order. She did not feel she received adequate guidance.  
15 She felt that she didn't receive adequate legal advice.  
16 And she was concerned that her declaration disclosed too  
17 much information about her location and that the batterer  
18 could find her based on what the declaration said. And  
19 she was sorry that she had filed it.

20           So it's a problem that we're very concerned  
21 about.  
22           Moving on to Guideline No. 11, "Notice in ex  
23 parte proceedings." I agree with this guideline, that the  
24 notice requirements should be determined on a case by case  
25 basis. Many of my clients are seeking restraining orders

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1   against dangerous felons. And at the very least, a  
2 temporary restraining order should be in place to deter  
3 the batterer from retaliating when he gets notice of the  
4 action.  
5           Moving on to Guideline No. 16, "Child and spousal  
6 support orders available." I would also like to include  
7 custody in this discussion. Because I think it's all  
8 interrelated. I agree with this guideline. I don't think  
9 a judicial officer can grant a stay away order and hope to  
10 stop the domestic violence. I don't think you can take a  
11 piecemeal approach to restraining orders. I think you  
12 need to deal with the entire situation. And the entire  
13 situation is that if the domestic violence victim is  
14 unable to support herself, she's going to go right back to  
15 the batterer.  
16           I have asked many of my clients why it took them  
17 so long to leave the situation. And they generally tell  
18 me, "I can't support myself on my own. My kids and myself  
19 will be on the streets." So I do believe a support order  
20 should be granted with the restraining orders.  
21           I'd like to also talk for a minute about custody  
22 orders. I think custody orders should be included with  
23 the restraining order. And I'll tell you why. When you  
24 don't grant a restraining order -- a custody order along  
25 with the restraining order -- something as simple as mom

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1   taking the kids to school, she has to be fearful that  
2 those kids are going to be yanked out of school by the  
3 batterer and not given back to her. She really can't do  
4 much without a custody order.  
5           And the truth of the matter is, in my experience  
6 clients are filing restraining order forms first. They  
7 may wait months before they file their dissolution action.  
8 They may wait months before they file a paternity action.  
9 So to say, "Well, you can get your orders in a paternity  
10 action, you can get your orders in a dissolution action,"



11 may not help her at the critical beginning stages of her  
12 case when support is so badly needed.

13 Next regarding Guideline No. 23, "Withdrawal or  
14 dismissal of applications for restraining orders." I  
15 agree with this guideline. I think that the court should  
16 take steps to ensure that the dismissals of restraining  
17 orders are not a result of coercion of distress. And that  
18 when possible, a judicial officer should have a hearing to  
19 determine if there's been duress.

20 And I had a client who was very, very poor. Had  
21 no money. We had filed a restraining order. She had a  
22 restraining order in place. And her batterer told her  
23 that if she dismissed the restraining order, he would give  
24 her some money. And without my knowledge she went ahead  
25 and did that. She dismissed the restraining order because

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1 she needed the money so badly.

2 So I do think a hearing to determine whether or  
3 not the batterer has influenced her in some way is really  
4 important.

5 Guideline No. 40 regarding "Non-CLETS restraining  
6 orders." I concur with this proposal, that the courts  
7 should not grant non-CLETS restraining orders. I do think  
8 that they create a false sense of security. And I think  
9 that the biggest problem is with unrepresented litigants.  
10 They may become -- you know, they may stipulate with  
11 opposing counsel on the other side. They may be pushed  
12 into something. An unrepresented litigant may not  
13 understand that they will not be receiving the same  
14 protections under a non-CLETS restraining order. And this  
15 has happened in my practice, I've seen clients agree and  
16 they really don't understand.

17 I'd also like to cover one issue that I feel is  
18 really important and it hasn't been mentioned in the  
19 guidelines. And I'm going to call it the Recent Violence  
20 Requirement. Some judicial officers are refusing to grant  
21 restraining orders unless there's been recent violence.  
22 There's been some talk that there may be a chilling effect  
23 from Family Code Section 3044 and this is why they don't  
24 want to grant the restraining order in the first place,  
25 unless there's been very recent violence.

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1 It's my understanding that the recent violence is

2 about a one month requirement. That the violence must  
3 have occurred within one month of the filing of the  
4 restraining order application. We feel this is a real  
5 problem. This can foreclose a domestic violence victim's  
6 ability to obtain a restraining order if she's not able to  
7 file a case within one month from the time of violence.  
8 This happens all the time. Many of my clients do  
9 not file their restraining orders within one month. And  
10 there are many reasons for it. It could be that maybe  
11 she's in hiding. And maybe she just has not gotten to a  
12 place where she can file that restraining order yet.  
13 Maybe she's unaware of her legal rights to begin with.  
14 Maybe she's not aware she can get a restraining order.  
15 Maybe she needs to speak with an attorney. Maybe she's  
16 not aware that there is a requirement of recent violence.  
17 Maybe she's not emotionally ready.  
18 A lot of times it occurs when the batterer is  
19 incarcerated for a crime not related to the victim of  
20 domestic violence. And so she's not worried about getting  
21 herself protection. And then all of a sudden she says to  
22 me, "He's going to be released. I need a restraining  
23 order." Well you haven't had recent violence. So what do  
24 you do?  
25 And so I'm hoping in the future that maybe this

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1 could be the subject of a draft guideline. I think it's  
2 very important that judicial officers look at these issues  
3 on a case by case basis. And maybe determine why the  
4 victim is choosing at a later date to file for a  
5 restraining order.  
6 Thank you, again, for inviting me to be here  
7 today.  
8 JUSTICE KAY: Thank you.  
9 Any questions?  
10 HONORABLE MacLAUGHLIN: Yes.  
11 You mentioned one instance where the client of  
12 the self-help center didn't get the kind of advice you  
13 think they should have received.  
14 Was that a location where there was also,  
15 however, not a DV clinic? Because in L.A. we have 22 DV  
16 clinics and of course only some are self-help centers. If  
17 that's the case, I'd like to find out, maybe we can do  
18 something about that right away.  
19 MS. SEGAL: It's my understanding that there's a  
20 new self-help clinic at one of the courthouses.  
21 HONORABLE MacLAUGHLIN: Well, I'd like you to  
22 tell me where it is so that --  
23 MS. SEGAL: I believe it's actually at Hill  
24 street.  
25 HONORABLE MacLAUGHLIN: At the --

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1 MS. SEGAL: At the Hill Street Courthouse at  
2 Central.  
3 HONORABLE MacLAUGHLIN: At the main courthouse?  
4 MS. SEGAL: Uh-huh. And it is separate from  
5 Department -- or Room 245.  
6 HONORABLE MacLAUGHLIN: But there is a DV clinic  
7 in that courthouse as well.  
8 MS. SEGAL: Yeah, that's what they tell me.  
9 HONORABLE MacLAUGHLIN: Okay. All right. Thank  
10 you?  
11 MS. SEGAL: You're welcome.  
12 JUSTICE KAY: Okay. Thanks very much.  
13 MS. SEGAL: Thank you.  
14 JUSTICE KAY: Oh, I'm sorry.  
15 HONORABLE KOPP: Look at Recommendation No. 23.  
16 Thank you for this written presentation which follows your  
17 testimony.  
18 MS. SEGAL: Oh, you're welcome.  
19 HONORABLE KOPP: Are you suggesting that in  
20 Guideline 23, we change the wording so it states, "and  
21 should, whenever possible, conduct hearings" in place of  
22 the word "encourage?"  
23 MS. SEGAL: I think encourage is enough.  
24 HONORABLE KOPP: Do you think that's sufficient?  
25 THE DEPONENT: I think encourage is enough.

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1 Yeah, I think it's sufficient.  
2 JUSTICE KAY: But your point was that having  
3 those hearings, if there's been no previous TRO is a bit  
4 of a Hobson's choice because the victim's exposed to  
5 immediate retaliation with no protection in place.  
6 MS. SEGAL: Yes, I am. When there's been severe  
7 domestic violence and when the batterer is a dangerous  
8 person, yeah.  
9 Yeah. I think it's very, very frightening for  
10 the victim of domestic violence.  
11 JUSTICE KAY: Okay. Thank you.  
12 MS. SEGAL: Thank you.  
13 JUSTICE KAY: All right. Finally, Miss Dianna  
14 Gould-Saltman. Saltman, is that right?  
15 MS. GOULD-SALTMAN: It is. I always get the  
16 extra S, but thank you.

17 JUSTICE KAY: All right.  
18 MS. GOULD-SALTMAN: Thank you so much for  
19 inviting us here.  
20 I am Dianna Gould-Saltman. I am the former Chair  
21 of the Los Angeles County Bar, Family Law section. And  
22 I'm speaking to you on behalf of the section. We  
23 appreciate your invitation to allow us to comment on this.  
24 I would like to let you know the perspective from  
25 which I'm coming. Unlike the predecessor speakers, I am a

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1 private practitioner, as are most members of our Family  
2 Law section. We represent those who are accused of  
3 perpetrating domestic violence, as well as those who are  
4 alleged victims of violence. In my personal case I also  
5 in addition to representing both those constituents, sit  
6 as a judge pro tem periodically and a judicial officer  
7 with regard to domestic violence. And in my prior life  
8 before being an attorney, I was a volunteer at a rape  
9 crisis center. So I have some familiarity with the  
10 issues.  
11 I'm a little bit disturbed, although understand  
12 the language being used by the other speakers in terms of  
13 victims and batterers. From my perspective, until  
14 findings are made, there are alleged victims and alleged  
15 perpetrators. Once a finding is made, a different  
16 perspective has to take place.  
17 So we've been specifically asked to address the  
18 Domestic Violence Prevention Act restraining order  
19 proceedings, and because our section deals exclusively  
20 with family law restraining orders rather than civil  
21 harassment proceedings or criminal restraining orders, I'm  
22 going to limit my remarks to that.  
23 The guidelines contain 40 proposals and to the  
24 extent I'm not addressing those proposals in my remarks,  
25 they should be considered endorsed as proposed.

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1 Number 7, "Counseling." And I'm going from the  
2 short list now. This proposal requires that individuals  
3 seeking protection should not be ordered to attend  
4 counseling without careful consideration as to the court's  
5 authority to order counseling for the protected person,  
6 And the value of mandatory counseling under the  
7 circumstances of the case.

8           When victims of domestic violence take the huge  
9 step of seeking needed protection from the court system,  
10 it's critical that those persons not be made to feel that  
11 there's something wrong with them, such that he or she  
12 needs counseling to fix it. It may be that many victims  
13 of domestic violence would benefit from inside oriented  
14 therapy to determine why they've gotten into violent  
15 relationships and how to identify potential future of such  
16 relationships. But that's something that needs to occur  
17 down the road.

18           At the time of the initial application for  
19 restraining orders, it's time to put out the fire, not to  
20 read up on fire prevention. No application should be --  
21 or no applicant should be made to feel that he or she must  
22 agree to therapy as a condition of protecting himself or  
23 herself and his or her children from violence.

24           With regard to Recommendation No. 11, "Notice in  
25 ex parte proceedings." This proposal seeks to prevent any

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1 blanket rules requiring notice for every ex parte motion,  
2 but that whether notice should be given should be on a  
3 case by case assessment.

4           Now, existing law already does provide for that.  
5 If the applicant for a restraining order cannot know  
6 whether notice should or shouldn't be given in a  
7 particular instance, and would prefer to avoid  
8 confrontation -- which is a natural human response,  
9 especially if there's been a history of battering --  
10 before a protective order is issued, he or she needs to  
11 have a clear understanding of when notice is required. Or  
12 risks failing to give notice under circumstances where the  
13 applicant thought it wasn't necessary but the judicial  
14 officer disagree, and didn't issue the protective order  
15 for the sole reason that notice was not given.

16           Likewise, due process is the benchmark of our  
17 judicial system. Every person against whom a restraining  
18 order is sought has the right to know the charges against  
19 him or her at the earliest possible juncture, unless good  
20 cause has been shown. To do otherwise would deprive the  
21 unjustly accused of the ability to gather evidence  
22 exculpatory to him or her on a timely basis. A balance  
23 must be struck, but existing law does provide that  
24 balance.

25           With regard to Proposal No. 15, "Past acts."

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1 This proposal states the courts should not impose a  
2 blanket arbitrary timeline of what constitutes past acts  
3 of abuse, but rather decide on a case by case basis.  
4 We agree that the court should never impose  
5 arbitrary or capricious requirements at all. As to past  
6 acts, it's important that the judicial officers be given  
7 reasonable parameters within which to exercise their  
8 discretion without those parameters being arbitrary. For  
9 example, a pattern of similar violent conduct which  
10 extends for decades may be relevant to current conduct as  
11 a reasonable predictor of future behavior. And that's  
12 very, very past conduct. But similar conduct from decades  
13 before without that pattern in between may not be  
14 relevant. A judicial officer needs to have the discretion  
15 to make that determination.  
16 Proposal 19, "The right to a hearing." This  
17 proposal states that if a jurisdictionally adequate  
18 application for an ex-parte temporary restraining order is  
19 denied, the court must set the matter for a hearing.  
20 Sometimes temporary restraining orders are denied because  
21 of circumstances not an emergency, but after notice and an  
22 opportunity for both parties to be heard, the orders could  
23 and would be granted. Other times the temporary  
24 restraining orders are not granted at an ex-parte hearing  
25 because no cause has been stated for either ex parte

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1 relief or for the underlying long-term relief.  
2 The courts shouldn't refuse to set the matter for  
3 hearing if the applicant wishes it set for hearing.  
4 However, if the applicant does not wish the matter to go  
5 forward or the relief would make no sense at the time of  
6 the hearing, that is, it's for protection for the  
7 applicant at an upcoming event which will have come and  
8 gone by the time of the long-term hearing, then the court  
9 should not be compelled to set such a hearing.  
10 No. 20, "Orders generally." The proposal is that  
11 the court should consider the application for a  
12 restraining order may issue all appropriate orders without  
13 requiring corroborating evidence.  
14 As worded, this is unclear. And thus creates a  
15 problem. If the law permits the additional relief and the  
16 party to be restrained has received appropriate notice and  
17 an opportunity to be heard and there's sufficient evidence  
18 to support that additional relief requested -- or even not  
19 requested but if it's not requested then query whether  
20 notice has been given -- the relief would be granted, and  
21 should be granted. If any of those three pillars are  
22 missing, then the requirements of due process have not  
23 been met.

24                   No. 34, "Poor coordination." As disputed  
25   communication improves, the tools should be used to

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1   transmit information as fast and accurately as possible.  
2   It can be extremely frustrating for judicial officers,  
3   attorneys, litigants and law enforcement when information  
4   conflicts and there's no timely way to get information  
5   from one agency to another. And in a family law context  
6   it is upsetting but in the context of domestic violence,  
7   the stakes are much higher because safety is a factor.  
8                   And on No. 40, I seem to disagree with the  
9   previous speakers to some extent, regarding non-CLETS  
10   orders. The Proposal suggests the courts decline approval  
11   or make no non-CLETS restraining orders. The concern is  
12   that it gives litigants a false sense of security because  
13   such orders are not generally enforceable by law  
14   enforcement but only by contempt proceeding.  
15   There's also a concern that victims of domestic violence  
16   might stipulate to mutual restraining orders, although the  
17   victim has done nothing wrong, just for the sake of peace.  
18   And that certainly has happened.  
19                   While these concerns are reasonable, they assume  
20   the court's inability or unwillingness to approve of  
21   non-CLETS restraining orders will result in CLETS orders  
22   in appropriate circumstances. But it's just as likely  
23   that given that binary choice, domestic violence victims  
24   could decide to request a dismissal of their DVPA  
25   petition, or just not show up for the hearing, and the

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1   court would have no choice but to dismiss for lack of the  
2   prosecuting witness.  
3                   In some cases there's been a history of  
4   unidirectional abusive conduct and the court has good  
5   reason to be skeptical about an agreement to non-CLETS  
6   restraining orders. In other cases there's been a single  
7   incident around the time the parties separated where there  
8   has been no pattern of such behavior, and in those cases  
9   the parties may for good reason, wish to stipulate to  
10   conduct restraining orders that don't rise to the level of  
11   CLETS orders, understanding the limitation of those  
12   orders.  
13                   To require --  
14                   JUSTICE KAY: Are you saying they should be

15 orders or just private agreements?  
16 MS. GOULD-SALTMAN: No. I'm saying that if the  
17 parties have information and understand the difference  
18 between CLETS and non-CLETS orders, and given that  
19 information they consent to and wish for non-CLETS orders.  
20 And those non-CLETS may not be mutual, they may be  
21 unidirectional, understanding they are only enforceable by  
22 contempt.  
23 JUSTICE KAY: I just want to make sure I  
24 understood.  
25 MS. GOULD-SALTMAN: Sure.

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1 If we require that those applicants who bring the  
2 request put on a hearing or drop the charges, it removes  
3 from them, the ability to make autonomous decisions about  
4 their own lives. And sends to them the message that  
5 they're not adults capable of understanding what's good  
6 for them, so the court has to decide for them.  
7 I think that's an inappropriate message to be  
8 sending to litigants, especially to victims of domestic  
9 violence, who had their autonomy taken away and this may  
10 be their first step in regaining that.  
11 A better response would be that contained in the  
12 last paragraph of the Proposal. That if parties have  
13 entered into an agreement for non-CLETS orders and they  
14 understand the limits of those orders and the court has  
15 assured itself that the agreement was not entered into as  
16 a product of duress or coercion, they should be permitted  
17 under appropriate circumstances.  
18 Many of the proposals by this body require  
19 additional funds to effectively implement them. None of  
20 those proposals is more important than the appropriate  
21 allocation of judicial officers, adequately trained in the  
22 area of the relationship dynamics and the laws of domestic  
23 violence.  
24 So on behalf of the Los Angeles County Bar  
25 Association, Family Law section, I thank you for the

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1 opportunity to present information and participate in the  
2 improvement of judicial administration in domestic  
3 violence cases.  
4 JUSTICE KAY: Thank you.  
5 I just wanted to respond to one of the points you



6 made. Some of our recommendations -- and this is one of  
7 them -- reflect existing law, but not necessarily existing  
8 practice. One of those is the decision on a case by case  
9 basis whether to give notice.

10 The reason we put that in there is there are  
11 anecdotal reports that some counties generally always  
12 require notice and other counties never do. But we just  
13 want to reinforce that it should be done across the state,  
14 truly on a case by case basis.

15 MS. SEGAL: And I think not only is that  
16 important, it's important in this as well as in other  
17 areas, that judicial officers and those who administer  
18 their courts understand that local rules cannot supersede  
19 state laws and state requirements to the extent that  
20 they're inconsistent.

21 So if the law is clear, the implementation of the  
22 law needs to be as clear and not random.

23 JUSTICE KAY: Sure.

24 Are there any questions?

25 HONORABLE KOPP: Yeah. I'm not clear as to the

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1 thrust of some of the testimony.

2 Are you recommending that the wording of No. 7 be  
3 changed?

4 MS. SEGAL: No. The Council, I think, as worded  
5 is appropriate.

6 HONORABLE KOPP: Because the prior sentence says,  
7 "to the extent I don't address the particular proposal  
8 which should be considered endorsed as written," which  
9 implies that these are not endorsed as written.

10 MS. SEGAL: Well, if I didn't --

11 HONORABLE KOPP: But they all seem consistent  
12 substantially, in your testimony.

13 MS. SEGAL: Yes. I spoke about some that I  
14 strongly endorse. I spoke about some that I had some  
15 questions about. And I didn't want to leave the  
16 implication that if I didn't speak of it, I have a problem  
17 with it.

18 HONORABLE KOPP: All right. Thank you.

19 MS. SEGAL: Certainly.

20 JUSTICE KAY: Thank you.

21 We'll all break for lunch now. We are running  
22 about 10 minutes late. Let's try to start as close to  
23 12:30 as we can. Maybe 10 minutes after that. No later  
24 than 20 minutes to 1.

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1 (At 12:10 p.m. a lunch recess was taken.)  
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1 (At 12:50 p.m. the proceedings resumed as  
2 follows with the same parties present as  
3 heretofore:)  
4  
5 JUSTICE KAY: The third component of the hearing  
6 is called Enforcement of Orders for Relinquishment of  
7 Firearms. This aspect of our hearing today is especially  
8 critical to public safety. Throughout the country courts  
9 and justice system entities are grappling with ways to  
10 ensure compliance with firearms restrictions and  
11 relinquishment of firearms in domestic violations  
12 proceedings and at the same time, honor and enforce the  
13 rights of the defendants.  
14 Studies shows that most deaths due to domestic  
15 violence occurs as the result of the use of a firearm.  
16 Today we have representatives from law enforcement, the  
17 Department of Justice, prosecution and criminal defense to  
18 comment on these issues.  
19 I would like the speakers in this component to  
20 come forward. And as I do, I will introduce you as you're  
21 coming forward.

22           We have Undersheriff Larry Waldie from the Los  
23 Angeles County Sheriff's Office, the largest jurisdiction  
24 in the country if not the world.  
25           Next we have Deputy District Attorney Victoria

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1   Adams, who has extensive experience prosecuting domestic  
2 violence felonies in Los Angeles courts.  
3           Returning to the District Attorney's Office -- I  
4 mean, sorry, to the Sheriff's Office -- undersheriff  
5 Waldie will be joined by Deputy Attorney Alison Y.  
6 Merrilees, a statewide expert on firearms law and the  
7 Director of the Armed and Dangerous Project in the  
8 Department of Justice.  
9           And finally Mr. Gary Windom, the Public Defender  
10 of Riverside County and a member of the Attorney General's  
11 task force on Local Criminal Justice Response to Domestic  
12 Violence.  
13          All right. Now, which one of you is  
14 Undersecretary Waldie -- under -- I'm sorry, Undersheriff  
15 Waldie.  
16          UNDERSHERIFF WALDIE: For a minute there, your  
17 honor, I thought I was appointed to the federal -- it's  
18 part the government, it's undersecretary though.  
19          I'm the undersheriff. I'm here for Lee Baca.  
20 Sheriff Lee Baca could not make it so...  
21          JUSTICE KAY: So we were informed. It's nice to  
22 have you here.  
23          UNDERSHERIFF WALDIE: It's a pleasure to be here.  
24 Particularly in this particular matter.  
25          We appreciate the efforts of the task force in

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1   evaluating current practices and procedures for the  
2 handling of domestic violence and their recommendations.  
3          The task force recommended a minimum standard  
4 that law enforcement and prosecutors adopt procedures to  
5 determine if the batterer possesses firearms, and to seize  
6 such firearms in accordance with the requirements outlined  
7 in a protective order.  
8          We concur with this recommendation.  
9          As stated in the report, almost two-thirds of  
10 domestic violence victims who live in homes where there  
11 are guns reported, that their batterers use the guns to  
12 scare, threaten or harm the victims. The seizure of these

13 firearms would greatly increase the safety of the victim,  
14 the children, the family members as well as law  
15 enforcement itself.

16 In 2006 Senate Bill 585 amended Family Code  
17 Section 6389. The law now permits law enforcement to  
18 record the surrender of firearms upon service of a  
19 protective order. But there are some difficulties for law  
20 enforcement in effecting this surrender. The statute does  
21 not provide law enforcement with the authority to search  
22 the batterer's residence for the firearms listed on the  
23 protective order. Officers must establish independent  
24 probable cause beyond the court order that the batterer is  
25 in possession of firearms to be able to arrest the

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1 batterer for a violation of the court order under Penal  
2 Code Section 273.6. That probable cause obviously could  
3 be accomplished by statements of the batterer or a consent  
4 search to go in the house and find the weapons.

5 We are currently reviewing our procedures in  
6 enforcing the surrender of firearms. We're looking into  
7 how to deal with persons refusing to surrender the  
8 firearms and educating our personnel on the laws and  
9 limitations in confiscating those weapons.

10 The recommendation when the court is presented  
11 with evidence that a batterer does not file a  
12 relinquishment receipt with the court, the court should  
13 notify law enforcement so they can take appropriate  
14 action. That is, to protect the particular victims and  
15 law enforcement itself, knowing well full well that this  
16 batterer has not relinquished his firearms.

17 Where probable cause exists, the appropriate  
18 action would be for law enforcement or the District  
19 Attorney's Office to seek a search warrant, authoring the  
20 seizure of the firearms.

21 It's important to note that the probable cause  
22 decision must be made by, we feel, a judicial officer.

23 Where a finding of probable cause cannot be made,  
24 the court should consider revoking the batterer's bail  
25 bond or probation or find the batterer in contempt of

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1 court and issue an arrest warrant.

2 Verifying and identifying proper service of  
3 projected orders is another of concern. We're in the

4 process of our new mobile digital system, wherein deputies  
5 either in the field or at the Sheriff's Station -- we can  
6 do this at the Sheriff's Station now on the Internet --  
7 but we would like to be able to allow our deputies in the  
8 field to pull up on the Internet and if we can't use the  
9 Internet, from the Internet to our Intranet, to be able to  
10 pull up the actual protective order and notice of service  
11 that it has been accomplished to be able to act upon it in  
12 an appropriate manner.

13 Viewing these documents will enable the deputies  
14 to verify all the orders and the current status.  
15 Hopefully in the next six months this will be made  
16 available to all the deputies in the field.

17 The Sheriff's Department has been working with  
18 the court to implement new procedures to ensure protective  
19 orders are being properly entered into DVROS. Our  
20 personnel at courts are entering as soon as the court  
21 order is issued at the courts, to ensure that it is put in  
22 the system, alleviating the task of the victim to take it  
23 to a station or take it some place and have it entered.  
24 We are taking those domestic violence orders and answering  
25 them right at the courts themselves so that they're

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1 immediately available and then available to the troops  
2 either at the station and eventually in the patrol car.

3 So we welcome further recommendations in working  
4 with the task force and the courts to increase our  
5 efficiency in ensuring that the public and the victims are  
6 made safe.

7 JUSTICE KAY: Thank you very much.  
8 Any members have any questions?  
9 How about you, Mr. Slater?

10 MR. SLATER: Well, I certainly appreciate your  
11 validation about the need for the full text orders right  
12 to the patrol car. That's what we've been trying to do in  
13 Orange County and we do have a proposal in the  
14 recommendations to move that to a statewide repository  
15 online that every law enforcement officer would be able to  
16 get full text orders at the patrol car 24 by 7.

17 UNDERSHERIFF WALDIE: Oh, it would be wonderful  
18 for the deputies. As you know, the conflict of one saying  
19 one thing and the other saying another and then not having  
20 that text. And also the issue of proof of service, that  
21 it was served and it is validated in a timely manner. So  
22 it's very critical for law enforcement personnel, yes.

23 JUSTICE KAY: Thank you very much.

24 UNDERSHERIFF WALDIE: Sure.

25 JUSTICE KAY: All right. Next, Miss Adams?

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1 I moved you up in the batting order. As I  
2 understand, you have to run after your --  
3 DEPUTY DISTRICT ATTORNEY ADAMS: Yes, I do.  
4 Thank you very much.  
5 Good afternoon and thank you for having us.  
6 The Los Angeles County District Attorney's Office  
7 also is grateful for the efforts of the task force. But  
8 in reviewing some of the guidelines, we appreciate some  
9 and others we question whether the ease of implementation  
10 by our office in terms of the relinquishment of firearms.  
11 We share the same concern about -- that law enforcement  
12 has regarding that if the law's on the books and we have  
13 no means to enforce it, it becomes very problematic. And  
14 this is something that we are confronted with daily, is  
15 that if a victim has identified that there is a weapon in  
16 the home, law enforcement does not have the tools in which  
17 they can immediately seize it without going through a  
18 warrant process.  
19 So what we would request of the bench and the  
20 courts where possible is that in reviewing the search  
21 warrants, that there is a concern and a deeper  
22 understanding of the domestic violence issues, is that we  
23 really do need to get these warrants.  
24 The initial -- also in the guidelines there was a  
25 reference to the -- probably the futility of holding

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1 evidentiary hearings on this, that the lack of an abuser  
2 either being forthcoming with the evidence or even if  
3 there was evidence that there were firearms in the home,  
4 that the court lacked anything that they could do with  
5 that information. However, I would submit to you that  
6 what we would do with the information is use it as our  
7 basis for probable cause for the warrant.  
8 All too often we are asking our victims to be the  
9 keepers of their own protection. And most of the time  
10 they cannot do that. That once they give that information  
11 to us, our hands are tied. And so for the relinquishment  
12 of firearms section to have teeth, we also have to have  
13 some tools to enforce it.  
14 Other areas of concern are that we would -- we  
15 also appreciate the suggestion of doing the AFS search at  
16 the time that we're seeking the issuance of a protective  
17 order in criminal court. It is a matter that we are  
18 certainly going to attempt to implement within the  
19 District Attorney's Office relatively soon.

20 I have a paralegal just trying to do that  
21 quickly, but one of the concerns or the same concerns that  
22 the court has with doing an AFS search, is that unless you  
23 have the abuser's true and correct name, you cannot get a  
24 hit oftentimes. And in Los Angeles County, many of our  
25 defendants use various names at various different times

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1 for various reasons.  
2 But in order to make this guideline or  
3 recommendation actually have some teeth, what we would ask  
4 is that judicial forms be promulgated that would have  
5 check boxes on the protective order form that not only  
6 would give us a check box regarding the information as to  
7 whether there is a registered firearm in the home, but  
8 also is there anecdotal evidence or is there evidence from  
9 a reliable source of the victim that there are firearms in  
10 the home, But also a check box on there regarding whether  
11 there are existing restraining orders, under our 273.75  
12 obligation in the Penal Code to advise the court whether  
13 the victim is, in fact, in danger. We would ask that that  
14 check box be also included on our request for restraining  
15 order. Or criminal court protective orders. And that's  
16 something that we feel is missing there that would enhance  
17 our ability to do our job well.  
18 I think that we are on our way to doing this. We  
19 are consistently confronted though that again, we see in  
20 Los Angeles County that further education regarding all of  
21 the issues that are present in domestic violence cases  
22 remain.  
23 And if I could just go outside of our firearms  
24 relinquishment a little just to go to some other others.  
25 I applaud the task force review of the idea of

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1 temporary judges really should be discouraged at this  
2 stage of the proceeding on domestic violence cases. And  
3 to consider that at every stage of the proceeding is  
4 critical. And from bail to sentencing. And temporary  
5 judges, we feel at this time are not sufficiently educated  
6 in the areas of domestic violence. And oftentimes  
7 judicial efficiency or economy outweighs the protection of  
8 the victims.  
9 And so in that matter we seek where possible,  
10 that judges are the ones hearing these, and judges who are

11 sensitive to the areas of domestic violence.  
12 Thank you.  
13 JUSTICE KAY: Thank you very much.  
14 HONORABLE KOPP: I have a question.  
15 Let me ask you this, because I'm always  
16 fascinated by Los Angeles County succinctiveness, but what  
17 do you do, do you coordinate with the L.A. City Attorney  
18 and any other city that has a city attorney prosecuting  
19 misdemeanors?  
20 DEPUTY DISTRICT ATTORNEY ADAMS: We do. We work  
21 closely with the City Attorney's Office on many domestic  
22 violence issues. But also in Los Angeles County, the  
23 District Attorney's Office does handle many, many  
24 misdemeanors cases. And the areas that don't have a city  
25 prosecutor, we are the prosecutor that handles

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1 misdemeanors.  
2 And to the extent of coordination, do you mean do  
3 we talk about shared issues? We frequently meet on  
4 domestic violence issues. We sit on the same committees.  
5 We do talk about our filing standards and we do in some  
6 respects coordinate with them on some efforts.  
7 HONORABLE KOPP: And then on one of your  
8 recommendations, I take it you approve of the proposed  
9 Guideline 22 about the two additional boxes and you want  
10 another one.  
11 Is that right?  
12 DEPUTY DISTRICT ATTORNEY ADAMS: Yes.  
13 HONORABLE KOPP: Okay, thanks.  
14 DEPUTY DISTRICT ATTORNEY ADAMS: Thank you.  
15 JUSTICE KAY: Thank you once more.  
16 Next we have Deputy Attorney General, Alison Y.  
17 Merrilees.  
18 DEPUTY ATTORNEY GENERAL MERRILEES: Thank you so  
19 much for inviting me. And I apologize, I'm fighting a  
20 little bit of a respiratory thing, so I have a very husky  
21 voice today.  
22 And by the way, I appreciate the promotion again  
23 to being the Director of the Arms Prohibited Person  
24 Program. But that program is actually administered by the  
25 Firearms Bureau within the Department of Justice. So it's

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1 officially now administered by the Director of the



2 Division of Law Enforcement.

3 But in any case, the Bureau of Firearms does have  
4 a program called the Arms Prohibited Person Program and  
5 the Armed Prohibited Persons database, System database,  
6 because we happen to be on the subject -- and it is  
7 related -- I'll just give you a brief overview.

8 Prior to 2001, we did not have the legal  
9 authority to cross-match databases that we already had of  
10 people who had purchased handguns. And all of our  
11 databases that contain information about people who  
12 because of convictions, because of mental health history  
13 or because of restraining orders, for example, are  
14 prohibited from possessing firearms.

15 In 2001 we obtained legislative authority to  
16 cross-match those sets of information. And basically  
17 that's allowed us to identify people who have purchased  
18 handguns and who are now prohibited from owning them by  
19 law.

20 And since 2001 our Bureau has seized  
21 approximately 7,000 firearms, including 2,000 assault  
22 weapons from persons who are legally prohibited from  
23 owning them. And I'll tell you just a bit more about that  
24 later on when it seems more relevant, about resources at  
25 DOJ we may be able to make available to the courts and

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1 other law enforcement agencies.

2 First of all, I just wanted to let you know that  
3 of course the Department of Justice has a wide variety of  
4 resources, not only in terms of databases but also in  
5 terms of personnel. I'm never -- I never cease to be  
6 astounded by the amount of knowledge that my colleagues at  
7 the Department of Justice have from their decades, working  
8 with our systems and our programs and our databases, that  
9 we are literally a wealth of information, so please feel  
10 free to utilize us. For example, one of my colleagues  
11 happens to be in the audience today, who is -- I would  
12 have to say, probably knows more about the domestic  
13 violence restraining order system than anyone on earth.  
14 So please, if you have questions, make use of our  
15 resources.

16 DOJ is affected by your recommendations in many  
17 ways because of the variety of our programs and services.  
18 And today I'm only speaking to firearms issues, because  
19 that's really the only authority or the only involvement  
20 that I have. But we will be submitting formal written  
21 comments as a whole on behalf of the Department of Justice  
22 to indicate our response to your excellent  
23 recommendations.

24 And just to completely contradict what I just  
25 said about not talking about things that don't have to do

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1 with firearms, I want to chime in on the non-CLETS issue  
2 because it is so interesting.

3 First of all, there may be no such thing as a  
4 non-CLETS order, because we enter all orders that we're  
5 required to enter. And really as far as we're concerned,  
6 a court cannot stipulate that an order not be entered in  
7 CLETS. If the law requires it to be entered, we enter it.

8 Second of all, I think that really this brings up  
9 a really -- a legitimate attempt on the part of the courts  
10 to have some sort of a compromise to mete out justice in  
11 an individualized way that meets the needs of the parties  
12 who happen to be in front of the court at the time.

13 However, you know, acknowledging that, there is  
14 no statutory authority to try and lessen the consequences  
15 of making a legal order. Basically if an order is made  
16 under specific statutory authority, there are  
17 consequences. Not only that it has to be entered in our  
18 system, but it has consequences to firearms ownership.  
19 And I'll talk more about that later.

20 But there is a -- I understand the urge on the  
21 courts to individualize justice. But I think there has to  
22 be an acknowledgement. If you want more options, really  
23 there needs to be a statutory authority for that.

24 So I think a solution to that impulse would  
25 probably be to have some sort of a new statutorially

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1 authorized order that wouldn't require entry into CLETS  
2 and perhaps wouldn't result in firearms relinquishment.  
3 And then the courts needs are met, assuming that the  
4 courts making specific findings that that's an appropriate  
5 order, and the parties needs are met at the same time, and  
6 everyone's happy because there's no attempt or no -- you  
7 know, the parties are basically getting -- everyone's  
8 getting what they want and what they need.

9 I'd like to turn to my specific comments about  
10 the written draft guidelines. And I'm going to be again,  
11 addressing the entirety of the written documents, not sort  
12 of the hot topics.

13 First of all -- and this begins on page 19 -- as  
14 far as the Recommendation No. 1, for "Communication with  
15 justice system partners," which of course is always a good  
16 idea, I just wanted to bring your attention to the fact

17 that the Firearms Bureau is now involved with some  
18 demonstration projects in San Mateo and Butte counties in  
19 which those counties are developing some individualized  
20 protocols based upon the law, based upon best practices  
21 involving law enforcement partners, advocates, defense  
22 counsel and prosecutors and the courts.  
23 And so I know that they would be happy to share  
24 their findings and their recommendations with you and open  
25 that dialogue.

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1 And we've started that program. Basically we're  
2 funding some enforcement efforts with them. I know that  
3 that's often an issue, because of a settlement of a  
4 lawsuit that we had some proceeds to fund those positions  
5 for.  
6 The next comment I had was Recommendation No. 5.  
7 And that would be that the "Prosecutor conduct a firearms  
8 search in the automated firearms search system." And of  
9 course we would support that recommendation. And in  
10 response to the comment earlier about that being difficult  
11 because of the name search, actually the AFS system is  
12 quite flexible as far as recognizing variations on names.  
13 You don't have to have the exact name. The really  
14 frustrating thing about it is that if there are multiple  
15 people with the same name, John Smith -- you know, Jane  
16 Doe, Jose Gonzalez -- you could have many, many hits of  
17 the same person and have difficulty figuring out who  
18 you're really inquiring about unless you have some  
19 additional identifying information, such as a Social  
20 Security Number or a date of birth.  
21 Number 8, as far as the "Law enforcement inquiry  
22 at the scene." And I think this is perhaps the best way  
23 to minimize the need for taking firearms away from a  
24 prohibited person at some later point in time. Really if  
25 the law enforcement officer who's responding to the scene

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1 were making inquiry not only of the DOJ databases to  
2 determine perhaps this person is already prohibited by law  
3 from possessing firearms and perhaps I know serial numbers  
4 of the handguns that he purchased -- he or she  
5 purchased -- then that issue does not have to be brought  
6 up at some later point in time with a warrant. He's right  
7 there. And the firearms can be seized. And the person

8 should probably -- or there would be authority for arrest  
9 at that point also.

10 I think the inquiry at the scene about presence  
11 of guns should be mandatory, and seizure of those firearms  
12 should be mandatory if the person is already prohibited by  
13 law or if the officer believes that there is danger. I  
14 think that probably the officer should have the discretion  
15 not to seize firearms if the person is not already  
16 prohibited by law from possessing them and the officer  
17 does not believe that it is a danger at that time.

18 Recommendation No. 11, which was "Distribution of  
19 an information sheet." The court should distribute an  
20 information sheet to inform the restrained person how to  
21 safely and legally relinquish his or her firearms. We'd  
22 be happy to help with this. I think that it may be under  
23 development with Butte and San Mateo counties, and so we'd  
24 be happy to share our work product with you.

25 No. 16, the "Oral advisement about firearms

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1 restrictions." Absolutely this is appropriate. Persons  
2 coming before the court, criminal defendants and  
3 restrained persons should be fully advised about the  
4 responsibilities that they have under the law and  
5 restrictions that they have under the law.

6 The Fifth Amendment issue is a very thorny one  
7 but it's not quite as clearcut as it may appear. I  
8 think -- whether it is a Fifth Amendment violation to  
9 inquire of someone about firearms ownership may depend  
10 upon the circumstances, the time, place and manner in  
11 which that question is asked and the legal status of the  
12 person.

13 If they are not prohibited already from  
14 possessing firearms, it could be very well not a violation  
15 of the Fifth Amendment to inquire about firearms  
16 ownership. And there could certainly be inquiry or  
17 exploration about offering an offer of immunity for  
18 answering the question, and there are of course exceptions  
19 for exigent circumstances, officer safety, et cetera.

20 No. 20, which was the "Failure to relinquish or  
21 sell firearms notification form." There was a  
22 recommendation that the AOC should develop a form and  
23 procedure in consultation with the DOJ and other agencies  
24 as appropriate to ensure the timely notification of  
25 justice system partners about the restrained persons

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1 violation of the restraining order.  
2 Now, as far as procedure for notifying DOJ,  
3 really I think that's kind of taken care of in existing  
4 law and existing practice. When the order is made, then  
5 that's the notification to DOJ. I think there is some  
6 interest in working with specifically DOJ agents who have  
7 firearms expertise to go about removing firearms from  
8 prohibited persons, and to a certain extent you know we're  
9 happy to help with me but we have very limited resource.  
10 As I said, we have removed some 7,000 firearms in the last  
11 five years or so, but that's probably a drop in the bucket  
12 when you're looking at a statewide problem over years and  
13 years.  
14 So the most effective communication really needs  
15 to be from the court to the local law enforcement agency,  
16 because as a practical matter, they're the ones who are  
17 going to hopefully be serving the notice and they're the  
18 ones that are going to need to be going after the firearms  
19 if the firearms are not relinquished.  
20 And then of course the database that I mentioned  
21 earlier is available for law enforcement agency also. The  
22 Armed Prohibited Person System is a database that has sort  
23 of defined the system within the AFS, when I was talking  
24 about the multiple hits, multiple names, multiple persons.  
25 And it's refined the information in the criminal history

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1 files, as far as for, you know, some misdemeanor  
2 convictions result in a 10-year prohibition, the person  
3 would no longer be in the AFS database after 10 years from  
4 the date of that misdemeanor criminal conviction. The AFS  
5 database is still being fully populated with information,  
6 so it's possible that not every prohibited person in the  
7 state is in that database with their firearms identified.  
8 But it is a good -- certainly a good resource that is  
9 available for law enforcement.  
10 And I do have an additional suggestion. And  
11 this is the cousin of the non-CLETS orders, and my  
12 personal pet peeve, and since I have a captive audience I  
13 thought I would bring it to your attention.  
14 The problem is that court orders that allow  
15 firearms possession to people who are prohibited from  
16 possessing firearms. And this happens in a couple  
17 different contexts. Either storing rights after a  
18 conviction. In a restraining order it could be a silent  
19 restraining order. You know, it's under an applicable  
20 Family Law Code. And then there's a written notice, "no  
21 firearms restriction." Or after a conviction. For  
22 example -- and this is sort of an extreme example but it  
23 does happen -- a felony conviction for robbery is reduced

24 to a misdemeanor pursuant to 17.B, which there's no legal  
25 authority for but if the basis of a firearms prohibition

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1 is a felony conviction, it's problematic for the  
2 Department of Justice to analyze whether that person is,  
3 in fact, prohibited from possessing firearms.  
4 There is some, you know, some very clear case law  
5 that court orders -- and I'm sure you're aware of this --  
6 court orders are valid until they're vacated. And that  
7 means that even though an order is issued with in excess  
8 of a court's jurisdiction, it does apparently restore  
9 rights to people who have no right to have them.  
10 Now, this -- and this is very relevant in the  
11 domestic violence context, because a misdemeanor crime of  
12 domestic violence results in a 10-year prohibition under  
13 state law but under federal law it results in a lifetime  
14 prohibition on firearms, I understood.  
15 So really there is no court order that can or  
16 should restore firearms rights to a person who's convicted  
17 of a misdemeanor crime of domestic violence, because they  
18 are federally prohibited from possessing firearms for  
19 life.  
20 And again, that's something that people should be  
21 told right up front at the time when they plead guilty,  
22 because that is a lifetime consequence. And especially  
23 for someone who's interested in owning or using firearms.  
24 Or because they're a police officer or a correctional  
25 officer, they need to use firearms. That is clearly a

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1 very serious consequence.  
2 And I understand that courts want to have mercy  
3 for people who are in a situation where they need firearms  
4 to have their jobs and to do their jobs. But it can't and  
5 it shouldn't be done because -- I mean, without a change  
6 in the law -- because that is congressional intent. That  
7 that would be the consequence. And until California  
8 changes our law so that there is a complete expungement  
9 after conviction -- which we don't have -- then that is  
10 the situation for those poor people.  
11 But I think that really -- I hope that courts  
12 would be educated about the effect of these convictions  
13 and the status. And I hope that judges would not make  
14 those orders. I hope that district attorneys would not

15 agree to them. Because really if the law is that the  
16 orders are valid until they're vacated, who's going to  
17 vacate them? I mean, unless there is some case law that  
18 says that the Department of Justice has standing, that  
19 we're not estopped from going into court and getting those  
20 orders revoked, but as a practical matter that's just not  
21 going to happen. We don't have the resources and really,  
22 I think that judges and D.A.s don't want us to be butting  
23 into their business.  
24 So I'm just hoping that we can take care of the  
25 problem sort of where it starts, in the courtroom.

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1 Thank you so much. I really appreciate all your  
2 hard work.  
3 JUSTICE KAY: Thank you.  
4 Any questions for Miss Merrilees?  
5 The databases to which you referred about the --  
6 and I guess we have to name them.  
7 DEPUTY ATTORNEY GENERAL MERRILEES: It's called  
8 the Armed Prohibited Persons System database, APPS.  
9 JUSTICE KAY: Right. That's available to law  
10 enforcement agencies.  
11 DEPUTY ATTORNEY GENERAL MERRILEES: It's  
12 available through the CLETS -- through CLETS. So any  
13 agency that has CLETS access would also have access to  
14 APPS.  
15 JUSTICE KAY: Right. Okay. Thank you very much.  
16 DEPUTY ATTORNEY GENERAL MERRILEES: Thank you.  
17 JUSTICE KAY: All right. Gary Windom?  
18 You are the Public Defender of Riverside County.  
19 PUBLIC DEFENDER WINDOM: Yes, that's correct.  
20 My name is Gary Windom, the Public Defender for  
21 Riverside County. I'm management Chair, past Chair of the  
22 California Public and Business Association, Chair of the  
23 American Council of Chief Defenders.  
24 And I'm here today -- I'm going to ask this Chair  
25 if I might be able to submit a written response subsequent

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1 to my testimony today. I had a personal loss of my father  
2 within the last 10 days, so I had not been able to review  
3 all of this material prior to my coming here this  
4 afternoon.  
5 JUSTICE KAY: I'm very sorry.

6 THE DEPONENT: Thank you very much.  
7 But Bobbie is a good friend. And she's  
8 persistent. And I couldn't disappoint her and not attend  
9 here today. Thank you, Bobby.  
10 I have spent about 15 months on the Attorney  
11 General's task force for Domestic Violence. And it was  
12 very clear that it's a serious necessity that we look into  
13 this area of the law and provide safety and protection for  
14 victims who are abused by these individuals that cause  
15 this type of damage.  
16 I heard about how hospitals respond. I heard  
17 about the lack of response of law enforcement. We heard  
18 numerous -- got numerous testimony about the lack of  
19 response in subpoenas and how the courts respond. But one  
20 thing also became very clear to me. That we need to have  
21 balance.  
22 I saw time and time again that we forgot that the  
23 system is for all. And that the white elephant in the  
24 room is that some people lie. And not everyone who comes  
25 before our courts who make complaints about domestic

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1 violence are, indeed, victims of domestic violence. And  
2 the one body that is separating those two separate  
3 concepts is the court. And when the court steps over the  
4 line and loses its independence and the person appearing  
5 before that court doesn't have the belief that the court  
6 is going to be fair and balanced, then our system fails.  
7 So when the court starts going to the community  
8 and attending DV coordinated Council meetings and holding  
9 independent meetings of that type, it becomes -- or at  
10 least has the appearance of the court being not balanced.  
11 I believe that they should be educated. I  
12 believe that they should be aware of what's going on. I  
13 believe that the judges that are in our specialty courts  
14 should know what that area is all about. But I don't  
15 believe that they should have any preconceived ideas of  
16 whose right and who's wrong.  
17 And that's why we're there.  
18 With regard to the firearms, which I was asked to  
19 talk about, I believe that we have to have something there  
20 for protection. For victims. But when I looked at the  
21 proposal, especially No. 12, it says if there was  
22 evidence, the thing that came to my mind is what is the  
23 merit? How do we measure this? What standard are we  
24 using? Is it preponderance? Is it clear and convincing?  
25 Is it beyond a reasonable doubt?

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1           And when we have this person come to a hearing,  
 2 what are we going to do? Are we going to compel -- we're  
 3 going to compel him to come there in a criminal matter and  
 4 then we're going to have him testify about weapons. But  
 5 is that information going to be used against him in the  
 6 criminal matter at chief?  
 7           There doesn't appear to be anything to protect  
 8 that statement. There's no immunity in the State of  
 9 California that can't be done here. I understand there's  
 10 some federal rules and I'll present some of those cases in  
 11 my written response. But it doesn't apply here in  
 12 California. So the person would be reluctant to give  
 13 information at this stage in the proceeding, knowing that  
 14 a criminal proceeding is pending.  
 15           Or if in the civil arena we testify and the court  
 16 is obligated or encouraged to give information to law  
 17 enforcement and the prosecutor, then there would be a  
 18 chilling effect, to be honest and relinquish weapons  
 19 because of the potential criminal matters that would be  
 20 brought against that individual.  
 21           So I think there should be some discussion about  
 22 how we can get these weapons out of the hands of people  
 23 who are prone to use it against their spouses and loved  
 24 ones and protect the constitutional boundaries at the same  
 25 time. Because I'm a staunch believe that no life, no

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1 liberty, no property should be taken away without due  
 2 process and an opportunity to be heard.  
 3           And so and I looked at this and I said, okay,  
 4 we're going to go through the civil hearings under No. 17  
 5 and we're going to have a hearing and we're going to look  
 6 to see whether the restrained person possesses or has  
 7 access to a firearm. There's nothing in there that define  
 8 what access means.  
 9           In the family law arena there labor a removal  
 10 order from that court saying that you ought to remove  
 11 yourself from that home. For the safety of the family.  
 12 For the safety of the victim. Presumed victim. And then  
 13 where is that individual going? Say I go to my twin  
 14 brother's house here in Los Angeles, who's an avid gun  
 15 buff. I have no place else to go. So I go to my  
 16 brother's place. And do I have access to the weapons?  
 17 What does it mean? And that person may be in violation  
 18 of that order because he has been compelled to leave his  
 19 home, go to another location where he has no control over  
 20 the individual who has weapons in that house.  
 21           I think these are the concerns that we have to

22 look at. And if we jump too quickly without taking into  
23 consideration those aspects of it, then I think we might  
24 be wrong in the process.  
25 I think the Fifth Amendment lives. And I think

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1 that if we're going to require these people to testify in  
2 both criminal and civil matters, that they should be given  
3 some type of immunity in order to be able to balance what  
4 we're talking about.  
5 And until I give my written response, I'll close  
6 with that.  
7 JUSTICE KAY: Thank you very much.  
8 Any questions?  
9 All right. We picked up a little time on that  
10 segment so I'm going to go right into the next segment  
11 without a short break that I had planned. And I  
12 understand that the court reporter and we need breaks from  
13 time to time. I'm not going to be able to complete the  
14 entire next series of presentations without a break for  
15 the court reporter and for us. But let's get started on  
16 them anyway.  
17 Our fourth component of the hearing is entitled  
18 "Improving Practice in Criminal Domestic Violence Cases."  
19 This aspect of the hearing contains a series of  
20 recommended practices that mirror the chronology of the  
21 criminal domestic violence case from arraignment to  
22 disposition and when applicable, post-conviction matters.  
23 Some of the practices are already mandated. Others are  
24 advisory.  
25 One of the concerns of the Attorney's General

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1 task force was deviation from mandatory terms and  
2 conditions of probation as required by Penal Code Section  
3 1203.097.  
4 Today we will hear from judges, probation,  
5 prosecution and defense as well as a batterer intervention  
6 provider about how the statute is working and the  
7 resources necessary to make needed improvement in these  
8 cases while preserving defendants' rights.  
9 First we will be hearing from Judge Colleen Toy  
10 White, Presiding Judge of the Ventura Superior Court.  
11 Judge White just finished an assignment in the criminal  
12 domestic violence court.

13 Judge White?  
14 Ah, all right. I'm going to be introducing the  
15 speakers just before they testify. There's so many that  
16 you'll forget who they are.  
17 HONORABLE TOY WHITE: All right, thank you.  
18 JUSTICE KAY: And first I want to -- Mary Ann  
19 Grilli has back problems temporarily. Sometimes she has  
20 to get up and walk around a little bit. That's why she's  
21 not here. It's not out of lack of respect, I assure you.  
22 HONORABLE TOY WHITE: I'm entirely sympathetic  
23 with Judge Grilli.  
24 Good afternoon everyone. Thank you, Justice Kay  
25 and members of the panel.

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1 I am Toy White, the Presiding Judge from Ventura  
2 County.  
3 I want to thank you in advance, of the  
4 opportunity to be here this afternoon and perhaps to  
5 comment on your recommendations. But more specifically,  
6 I've been asked to comment on improving practices in  
7 criminal domestic violence cases.  
8 Now, I have provided with you -- and I hope  
9 you've gotten it -- a copy of my testimony and with a  
10 complete understanding that it's -- my presentation would  
11 be after lunch. I had provided you pictures too in case  
12 things start to drag.  
13 I want to tell you just a little bit about  
14 Ventura County. We're a county of about 750,000 people.  
15 We have 28 judges. We have four commissioners or  
16 subordinate judicial officer and we are excitedly  
17 expecting a new judge in June of this year. We have three  
18 courthouses in our county and we have six law enforcement  
19 agencies.  
20 For many years we had handled criminal domestic  
21 violence cases in what I would describe as the traditional  
22 way. Although law enforcement and district attorneys  
23 prosecuting these cases had special training, the court  
24 assigned the cases in very much the same fashion we would  
25 if they had been burglaries or robberies or any other type

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1 of criminal case. And as a result, we experienced the  
2 kinds of problems that have been identified in your  
3 report. We had judges that were doing inconsistent

4 sentencing. We had problems with our criminal protective  
5 orders. And we really didn't have a very good liaison  
6 with our justice and social service partners.  
7 Our first domestic violence courtroom handled  
8 only misdemeanor cases. We started down this path by  
9 putting our toe in the water. And in 2005 that calendar  
10 expanded to include all domestic violence cases that  
11 occurred in Ventura County, both felony and misdemeanors.  
12 And when I say it handled every aspect, that included  
13 arraignments, bail settings and hearings, criminal  
14 protective orders, sentencings, 30 and 90-day reviews, and  
15 in these cases violations of probation and terminations of  
16 criminal protective orders. The cases were only assigned  
17 out of this courtroom for two reasons. When there were  
18 lengthy hearings, like a violation of probation hearing  
19 that would last for some time, or for jury or court  
20 trials.  
21 Now, in our County our District Attorney filed --  
22 aggressively filed violations of restraining order cases.  
23 So we had a number of those cases also in our system. And  
24 those cases were handled by our judges -- or by our judge  
25 in the domestic violence courtroom in exactly the same

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1 way. And I'll talk a little bit more about the specifics,  
2 but in violation of restraining order cases, the  
3 perpetrator was put on probation as a felony probation for  
4 36 months; they received the standard 52 weeks of domestic  
5 violence counseling classes; the 30 and 60-day reviews.  
6 So we made no distinction in those types of cases.  
7 We did realize from a judge's perspective -- and  
8 you all know this -- that these are difficult cases  
9 because they involve not only violence, but they involve  
10 all the dynamics of the family. And one of the things  
11 that became an increasing concern was the impact these  
12 kind of cases have on children.  
13 We did recognize that the assignment took an  
14 emotional toll on judges and our court staff. And we have  
15 made some efforts to recognize that and deal with it. And  
16 again, I'll talk about that later.  
17 In Ventura we think we have learned some lessons  
18 on how to best handle domestic violence cases. We learned  
19 that, as I said, we needed a court that specialized in  
20 domestic violence. And even though the judges worked hard  
21 to handle these kind of cases, we could not achieve  
22 consistency in sentencing and services to victims when  
23 these cases were assigned out in a random fashion to a  
24 variety of judges.  
25 And so consequently we created the specialized

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1 domestic violence court. And you will notice if anyone  
2 says the word "boutique court" within my hearing, I will  
3 visibly react to that. It's not a boutique court, it's a  
4 domestic violence court.

5 We learned -- we didn't have a Family Justice  
6 Center like Casey Gwinn talked about this morning. But we  
7 did learn and I've referred to it as location, location,  
8 location.

9 In a sense we had to build a courthouse inside a  
10 courthouse. We did this without brick or mortar, as I  
11 indicate in my comment, but not without a considerable  
12 amount of effort. We did this by simply dedicating to the  
13 third floor of our Ventura Courthouse to courtrooms and  
14 services that impact the family. We had placed all  
15 courtrooms and services that are designed for domestic  
16 violence victims or defendants in the same wing of our  
17 building, and it is adjacent to the District Attorney's  
18 Victims Services Division, which also provides additional  
19 services.

20 That was one of the ways we attempted to  
21 accomplish the removal of the barriers that some victims  
22 have in getting services.

23 On our third floor -- I'm going to tick these  
24 off, we have our criminal domestic violence courtroom; we  
25 have our drug court; our family law civil domestic

1 violence restraining order court; we have our child  
2 support courtroom; our mental health court; our Quick  
3 Start Assessment Center -- and I'll tell you a little bit  
4 about that in a minute; we have our children's waiting  
5 room; our family law facilitator; our family law  
6 courtrooms; our family court mediators. And on the fourth  
7 floor we have our self-help legal clinic that handles  
8 guardianships and adoptions.

9 One of the primary lessons that we have learned  
10 is that it's critical to have the Probation Department  
11 formally and intensively supervise all domestic violence  
12 cases. Now, we did that in an effort to make sure that  
13 the defendants would comply with probation -- and you're  
14 going to hear from the Chief of our Probation Department  
15 in just a minute, and she'll be able to tell you more  
16 about that.

17 We also have the presence of an experienced  
18 probation officer in the courtroom. And he or she is able  
19 to -- with a computer -- access all kinds of information

20 that we need when dealing with a case. And in addition to  
21 that, we have intensive monitoring outside the courtroom.  
22 We think that really has been critical to our success in  
23 domestic violence cases.

24 In each of our cases the probation department  
25 prepares a formal report. Now, that's for both felonies

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1 and misdemeanors. And I will tell you as a judge in that  
2 courtroom, that is critically important to making good,  
3 informed decisions. These reports provide the court with  
4 information about the facts of the case, the defendant's  
5 criminal record, input from the victim and a  
6 recommendation regarding sentencing and that includes  
7 suggested terms and conditions. And in our county those  
8 are standard terms and conditions because they almost  
9 never vary. It also provides the judge with the  
10 information about other cases that the defendant might  
11 have, and that would include if there's a parallel  
12 dependency case.

13 At each 30-day mandated review, the probation  
14 officer again is an integral part of that. That probation  
15 officer interviews the defendant and provides on the  
16 record, the court with information about the status of the  
17 defendant's probation. At the 90-day reviews the  
18 probation officer provides the court also with additional  
19 information about the status of the defendant's progress  
20 at that stage.

21 We also learned that the judge is an important  
22 part of a probationer's success and that when the judge  
23 monitors the 30 or 90-day reviews and if necessary, other  
24 reviews, that really establishes that expectation in the  
25 defendant that somebody cares about that case and

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1 especially to see that same face. And I'm sure some of  
2 our probationers get tired of that, but I tell them  
3 they're going to see the same old face; so the sooner they  
4 get it right, the better we'll all be.

5 One of the things that we learned is that we  
6 needed to focus special attention on cases where children  
7 are involved. And what that means is if children  
8 witnessed the violence between the parents, we do that --  
9 now the child -- let me make it clear -- the child does  
10 not have to be a named victim in this case. When the

11 district attorney files a case, there's a stamp on the  
12 bottom that says "children involved."  
13 And when I get the report from the probation  
14 office, I also get a restatement of what level that child  
15 was involved. But when we find that the child is present,  
16 every one of those cases are referred to a public health  
17 nurse for follow-up. And that public health nurse will  
18 visit the family in the home and provide whatever  
19 assistance the child or the children need.  
20 Now, you can only imagine what that might include  
21 in these kind of families. The assistance is provided to  
22 all the children in the family. And we also get a report  
23 back to the judge at the next hearing.  
24 What does that include? You know, I talked about  
25 dental -- perhaps dental care. You come in and you find

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1 children that are not in school. Something as simple as a  
2 child or a family of children with head lice. These  
3 families many times don't have any other connection with  
4 the system. Now, this is a voluntary participation. And  
5 that also -- we make it real clear -- that the public  
6 health nurse is just that. She is there to offer  
7 assistance. She's not a probation officer dressed in a  
8 nurse's -- or wearing white hose and a cap. It's a  
9 different program. 850 families have been referred to  
10 this program since it's been in operation.  
11 We also learned that we needed the ability to  
12 make referrals to drug and alcohol assessment.  
13 We also learned that treatment was a very vital  
14 part of the population that we see in domestic violence  
15 court. We accomplished that with a Quick Start Center --  
16 and if I could refer you to your pictures. Let's see,  
17 where the Quick Start Center? It's down, I think, about  
18 the third or fourth.  
19 The Quick Start Center is located in the hallway  
20 outside of the courtroom. It is staffed by Ventura County  
21 Behavioral Health clinicians. They do the assessment.  
22 And before we established this procedure, we were sending  
23 people four blocks away for their assessment. Our rate of  
24 show-ups was 54 percent. When we started the new Quick  
25 Start Center, which is "Take this piece of paper, go

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1 across the hall for your assessment," it is now at 94

2 percent. And that's an accurate number. It is possibly a  
3 little more than that.

4 And it became real clear to us that what was a  
5 very simple and low cost change, made a dramatic change in  
6 our ability to get the defendants hooked up with services  
7 and connected with treatment. Parenthetically, no new  
8 staff was hired. These people were already employed by  
9 Ventura County Behavioral Health. They were just in an  
10 office four blocks away.

11 We also know we needed we know to make referrals  
12 to mental health assessments and treatment. That's also  
13 done at the Quick Start Center. Same method. We were  
14 sending people in this case about three and-a-half miles  
15 away. And again, these are people who had mental health  
16 issues. And it wouldn't surprise any of you to know that  
17 very few of them were making connection with that service.  
18 And we've had some really terrific results with that.

19 We learned that we had a -- and I'll use the  
20 term -- is Gary still here?

21 No, Gary left.

22 Gary Windom and I have been friends for a long  
23 time. I was going to say, we learned we had a captive  
24 audience, but I want to be careful throwing around those  
25 terms. We had a waiting area and people sometimes waited

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1 for a while to get into our courtrooms, or waited for an  
2 assessment.

3 So we set up a video in that area. We played  
4 tapes in both Spanish and English. They were provided to  
5 us by First 5 of California. And they focus on parenting  
6 information and just a -- well, if you're familiar with  
7 First 5, those are the issues that they addressed. We  
8 plan to expand this with DVDs and we refer to the DVD's  
9 subject matter as life skills.

10 And also we want to have information that might  
11 be called public service announcements, that would  
12 describe the services that are available. We learned our  
13 families needed services, which included the assistance of  
14 the family law facilitator. That facilitator's office is  
15 just a few doors from the domestic violence courtroom.

16 You heard testimony this morning from private  
17 counsel and others who provide assistance to victims. Our  
18 families very often have issues that involve family court  
19 matters from child support to child custody issues. And  
20 that's one of the added values of the courtroom. The  
21 courthouse within the courthouse is in addition to the  
22 other services that we have. We're located just down the  
23 hall from the District Attorney's Victims Assistance Unit,  
24 and they provide about 99 percent of our service to  
25 victims when they need domestic violence restraining



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1 orders.

2 We learned that we needed -- and I refer to this  
3 as a "room with a view." And we've got a room for victims  
4 of domestic violence that is connected to our courtroom.  
5 It's staffed by district attorney advocates. They've got  
6 a computer. They can provide the victims with last minute  
7 assistance on restraining orders. They also often help  
8 victims to prepare their victim impact statement, if that  
9 hasn't been done prior to the court hearing. And that's  
10 picture 2.

11 And the most unique feature of the room is that  
12 it allows the victims to be in a room separated from the  
13 courtroom, but they can see and hear all the proceedings  
14 without being observed by the defendants that are in  
15 custody or anybody else who might be in the audience who  
16 might want to intimidate them.

17 Sometimes this is a little hard to conceptualize,  
18 but I'll do this analogy with the risk that I'm the only  
19 one that remembers. Something that used to be in movies  
20 called cry rooms. Okay? They were designed that when you  
21 had to take children to the movies, you took them to the  
22 cry room so you could watch the movie without disturbing  
23 everyone else.

24 This is that concept. For different purposes.  
25 But it also serves a purpose, if a mother or a victim does

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1 not want to leave the child some place, that child can  
2 also be there, again, without being in what's sometimes a  
3 pretty negative environment of the courtroom.

4 We learned we needed a safe place for children.  
5 Many of you have children's waiting rooms. And we've got  
6 that available on that same floor.

7 Tem 12 of mine is the "Criminal protective  
8 orders" and we learned that they're a necessary part of  
9 every criminal case. And we also learned that they are  
10 often very troublesome to get issued, modified if  
11 necessary and then terminated at the appropriate time. I  
12 think anybody dealing with criminal protective orders have  
13 struggled with all of those issues.

14 We do issue criminal protective orders in every  
15 case as soon as possible, either at the arraignment or the  
16 sentencing. They're served on the defendant by the

17 bailiff in the courtroom. The service is done before the  
18 defendant leaves the courtroom. If they're in custody,  
19 they're served. The defendant is advised of the criminal  
20 protective order at the time it is issued and the terms  
21 and conditions are read to the defendant on the record --  
22 I know many of you judges follow that same practice. The  
23 victims are provided with a copy of the restraining order  
24 there. And if the victims are not there, the district  
25 attorneys victim advocate takes the responsibility to get

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1 the victim their copy.  
2       The other thing that we do -- and this is in  
3 reference to one of your recommendations -- before the  
4 criminal protective order is modified, each of our victims  
5 are interviewed by a victim advocate and then they come  
6 into the courtroom. And if necessary, there's an  
7 additional inquiry by the judge. Sometimes that's  
8 necessary. Sometimes it isn't. But -- and if they're  
9 modified -- if they come in requesting a modification from  
10 a no contact order to a no force or violence, then the  
11 order is modified there; the new order is prepared and the  
12 service of that order happens before the victim and the  
13 defendant leave the courtroom.  
14       "Additional services." Almost everyone, I think,  
15 has alluded to the fact that victims typically need  
16 additional information regarding services. They are  
17 either identified by court staff or in our case, right  
18 outside the courtroom door we have a 211 phone -- and I  
19 think many much you are familiar with that -- it's  
20 available to either the victim or the defendant if they  
21 need to access any social service in Ventura County. It's  
22 a free phone.  
23       And we also learned we needed to be responsive to  
24 emergency protective order. So Like most of you, we have  
25 judges and we rotate issuing emergency protective orders

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1 24 hours a day, seven days a week. And we make sure that  
2 during the day, that we have a judge that is available if  
3 an emergency protective order is needed; we have a  
4 procedure for making sure that there's no delay in that.  
5       I'm going to quickly move through my other items.  
6       We did learn that we needed additional training  
7 for court staffing judges. We've implemented that with

8 our court staff. We had a presentation on domestic  
9 violence cases, inviting everyone from the court reporters  
10 to the judicial assistants to the clerks who take  
11 information at the windows. Our judicial secretaries have  
12 been involved in that. And we really try to -- first to  
13 recognize the impact that these kind of cases have on all  
14 the court staff. Sometimes as judges we think we're the  
15 only one in the world that's affected by that. But I  
16 think most of us know otherwise.

17 And the other thing we've tried to recognize is  
18 how procedurally complex these cases can be and to  
19 appreciate those that are working in these areas day in  
20 and day out.

21 We've also recognized that our judges need  
22 additional training. We've had -- at our Judges' Meeting  
23 we've trained on emergency protective orders. Again, a  
24 recurring theme. So we can have consistency in the orders  
25 that we sign.

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1 "Collaboration and resources." I think many,  
2 many courts have meetings. And our monthly meeting is  
3 specifically with organizations and agencies that impact  
4 domestic violence cases in our county. That includes  
5 everyone from the domestic violence team to we have the  
6 military bases come; all of our domestic violence class  
7 providers are there.

8 And again, what we've tried to do is recognize  
9 problems before they get to be problems. And deal with  
10 them in what's a very positive, we think, context.

11 I've listed all the other folks that we  
12 collaborate with. One of the things that it may be worth  
13 mentioning is an agreement we had with Human Services  
14 Agency, which is our Child Protective Service Agency. We  
15 have a protocol that if a judge recognizes an endangered  
16 child for whatever reason, during a court proceeding or  
17 because of some facts, the judge -- we have a protocol  
18 where they will respond immediately -- Child Protective  
19 Services and do an in-depth interview and review.

20 You're going to hear more from the probation  
21 department.

22 I want to end with a comment about our  
23 recognition of the fact that we need to evaluate our  
24 batterers' group. All of us who've been involved in this  
25 area, we've been making orders and we've been telling

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1 people they must go to 52 weeks of domestic violence  
2 classes. And without the anecdotal information -- and  
3 we've all received excellent anecdotal information -- you  
4 know, people will talk about how it's changed their lives  
5 and how they'll never be involved in these kinds of cases  
6 again. But since May of 2005 we've worked with a group  
7 called Batterers Program Evaluation. It's a three-year,  
8 \$450,000 study funded by Blue Cross, more specifically by  
9 Blue-Shield Against Violence. And it's a study  
10 specifically designed to evaluate batterers' treatment  
11 programs.

12 I talked a little bit about the details and  
13 they're studying two groups of men who were on probation.  
14 The two groups were 75 English speaking, 75 Spanish  
15 speaking. They're recruited from the courtroom at their  
16 30-day review and they're followed for a two-year period.  
17 And it's measuring very specifically, the outcome of  
18 completing the 52 batterer's classes and re-offense  
19 related to domestic violence and violations of probation.

20 And at a six-month follow-up, 86 percent of the  
21 participants were in compliance with probation. 6 percent  
22 had a new domestic violence case. And 28 percent had been  
23 re-referred to their domestic violence classes. And I'm  
24 looking forward to the results of this study. I think  
25 it's going to be of assistance to all of us.

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1 I just want to end by - we learned that the  
2 administrative office of the court had invaluable  
3 resources.

4 Thank you, Bobbie Welling and your staff. We  
5 were not hesitant to take advantage of the administrative  
6 office of the court as often as we could. And thank you  
7 for your help.

8 I'd be happy to answer any questions. I know  
9 it's late and I know you've had a long day. But I  
10 appreciate the time, not only that you're spending in this  
11 process, but thank you for listening.

12 JUSTICE KAY: And thank you, Judge White. It  
13 sounds like you've made remarkable progress in a short  
14 time.

15 THE DEPONENT: Thank you.

16 JUSTICE KAY: You should be congratulated.

17 We'll next here, as promised, from the Chief  
18 Probation Officer of Ventura, Miss Karen Staples.

19 CHIEF PROBATION OFFICER STAPLES: Good afternoon.

20 I'm Karen Staples and I'm the Chief Probation  
21 Officer for Ventura County. And I'd like to start by just  
22 thanking you for inviting us to speak here this afternoon.  
23 And thank you for taking your time to sit on this

24 commission.  
25 This is an issue that we in Ventura County feel

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1 really goes to the basis of the destruction of our society  
2 or the tearing of our fabric within society. In Ventura  
3 County we believe that domestic violence is really the  
4 basis for the tearing of the society, for the falling  
5 apart of our families.  
6 I'm sorry Casey left because I wanted to give you  
7 just something that this all reminded me of that he said  
8 at a domestic violence conference, probably 15 or 20 years  
9 ago. And at the time he was saying that the justice  
10 system was looking for the root cause of criminal  
11 behavior. If we could identify that one thing that caused  
12 people to go into the criminal lifestyle to commit crime,  
13 then what we could do is we can identify that and we could  
14 treat it and we would solve criminal behavior.  
15 So they did a survey of the inmates at San  
16 Quentin one day. And they went in and they asked them all  
17 these questions about themselves and what they experienced  
18 and blah, blah, blah, all of that. 100 percent of the  
19 inmates who did that survey that day, 100 percent  
20 identified that they had been the victim of or they had  
21 witnessed domestic violence when they were growing up in  
22 their households.  
23 Now, we know that and we've known that for years,  
24 and yet we haven't done a whole lot to really rectify  
25 that. You know, we go on and we struggle and we work

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1 towards it, but in my mind we have the answer that we were  
2 looking for. We know that everybody in San Quentin on  
3 that particular day was a victim of or witnessed domestic  
4 violence.  
5 Because of that, in Ventura County it's our  
6 philosophy and I know you talk on your report -- and I  
7 want to really thank you for your comments about probation  
8 should be fully funded. I really, really appreciate that.  
9 And I know the chief probation officers would absolutely  
10 support that. And if there's any way that you could  
11 accommodate that, we would very much appreciate that.  
12 But in Ventura County, you know, they say that  
13 your philosophy is reflected in your budget. And in  
14 Ventura County we have chosen to fund probation officers

15 to supervise and probation officers to write reports just  
16 for domestic violence case loads. We have approximately  
17 1,500 people on probation in Ventura County right now for  
18 domestic violence. And that's both misdemeanor and  
19 felony. We supervise misdemeanor domestic violence.

20 When I talked to the supervisor of our Domestic  
21 Violence Unit, I told him I was going to come and testify,  
22 and I got some particulars and some figures and  
23 everything, and he says, "Well, you know, if you have an  
24 opportunity, tell them something that's never made any  
25 sense to me." And what he said was it's a felony to

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1 possess a small amount of methamphetamine and yet it's  
2 only a misdemeanor to batter your spouse or someone who  
3 you have claimed that you love." And, you know, he's  
4 right. You know, and I kind of looked at him and I said,  
5 "Yeah, you're right."

6 Anyway, what we have is we have a unit in our  
7 Oxnard office that does nothing but supervise, like I  
8 said, domestic violence. We have a couple of case loads  
9 in our East County, where they are also just nothing by  
10 domestic violence. Our officers are trained in domestic  
11 violence. They attend conferences. They go to statewide  
12 training.

13 The emphasis that we really like to have our  
14 officers when they go out to the community, when they  
15 speak in the community and everything, one of the things  
16 that we really emphasize, that it is imperative that we  
17 hold people accountable. It doesn't do the batterers any  
18 good and it doesn't do the victims any good if we don't  
19 hold the batterers accountable. It's just like kids. You  
20 know, if they don't do something and three weeks later you  
21 say, "Oh, by the way, this is your punishment for what you  
22 did three weeks ago," it has to be immediate, and it has  
23 to be relevant.

24 We hold all of our clients to their terms and  
25 conditions and we take them back to the court for

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1 violations. We are extremely fortunate in Ventura County  
2 in that we have a bench that really supports probation.  
3 Really supports what we do. And as Casey said, we are  
4 fortunate to be in a County where they don't put a judge  
5 in there who doesn't want to be. They don't put a judge

6 in there who they don't know what else to do. They put  
7 quality judges. They put Judge White in there. And the  
8 judge who is in there right now, Brian Bak, is another  
9 judge who is just really, really a quality person, really  
10 cares about the issues, understands the issues, has gone  
11 to the training and works extremely effectively with  
12 probation and the other partner agencies within the  
13 process.

14 We also have for very, very serious situations,  
15 we have some of our domestic violence cases assigned to  
16 our intensive supervision units. And we send the  
17 officers -- and the officers in that unit are armed. So  
18 basically we send two armed officers out to the house to  
19 make sure that the batterer or the defendant is complying  
20 with the terms and conditions. We search the house for  
21 weapons. We search the house for anything else that we  
22 have permission to search the house for.

23 As an aside for a little story, two of my  
24 officers -- thank God they were armed -- were walking up  
25 to the front door of a house, as the victim is backing out

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1 of the house, crying and screaming, "Don't hurt me, don't  
2 hurt me," and she backs right into the arms of one of our  
3 officers and the perpetrator is coming toward her with a  
4 knife. You know, five minutes later we would have had at  
5 least someone being seriously hurt if not killed.

6 So we made the decision that some of the domestic  
7 violence cases really needed to be supervised on a very,  
8 very intensive basis. And thus, based on our  
9 classification system that we use when we assign cases for  
10 supervision, we have chosen to put some of the domestic  
11 violence cases in our intensive unit.

12 Because we have 1,300 people on probation, we  
13 can't intensively supervise all of them all of the time  
14 for their complete length of probation. So what we have  
15 is a classification system where we supervise them  
16 intensely up in the front and then once we have a feeling  
17 or a sense that the defendant is going to be going to  
18 their treatment, they are going to be paying their fines  
19 and fees, they are doing what they need to do to comply  
20 with their terms and conditions, then we back off a little  
21 bit and we reduce the amount of supervision that we  
22 provide to the person.

23 It's been very, very effective and we do this in  
24 conjunction with the courts. They understand that, you  
25 know, we're backing off. If someone after about, say,

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1 after their three-year probation, if after about 18 months  
2 they have completed all of their 52 sessions, they've paid  
3 their fines, their fees and things look like they're  
4 stable, we have even asked the court to convert their  
5 probation to CC&R or summary probation. But in the  
6 beginning we want to be sure that everybody is doing what  
7 they're supposed to do.

8       You know, it's just not the probation officer.  
9 It really is the cooperative effort -- and Judge White  
10 really alluded to it -- the cooperative effort of all our  
11 partners in the system. The public health nurse is  
12 absolutely invaluable. She's -- in this case it's a  
13 she -- she's just wonderful. You know, it's a little  
14 embarrassing, but she goes into the homes and works with  
15 the families that I send two armed officers in to talk to,  
16 and she just walks in by herself. But she is really  
17 wonderful.

18       We have a wonderful working relationship with our  
19 Batterer's Treatment, which we feel is very, very  
20 important to make it a successful program. We -- as you  
21 all know -- we are responsible for monitoring those  
22 programs. We are the ones who, I guess, would authorize  
23 or say that, yes, this is an acknowledged batterer's  
24 treatment program that you can go to. And because of  
25 that, we want to be sure that those treatment providers

1 are giving what they are supposed to be giving, they are  
2 working with our clients and providing the services that  
3 we are supposed to be providing, so we work closely with  
4 them.

5       In the past we have taken away that certification  
6 for some providers because we didn't feel that they were  
7 working effectively with us. They weren't letting us know  
8 when people weren't reporting -- you know, showing up for  
9 their classes, and they weren't submitting their  
10 documentation as we have asked them in a timely manner.  
11 So we took it away from them and then worked with them to  
12 get it back. And now we now use them again. But we feel  
13 it's very, very important that we monitor them and we work  
14 very close with them, and because of that relationship we  
15 have a nice communication back and forth.

16       The communication again with Behavioral Health  
17 and with Child Protective Services, I can't emphasize  
18 enough how important all of that is so that all the  
19 players in the system, all the players who are dealing  
20 with that particular family are on the same page of music  
21 and we're all working towards the same goal, is to make



22 that family safe for the victim and if there are children,  
23 for the children.  
24 Finally, I would just like to say that I  
25 really -- again, I really, really appreciate all of your

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1 efforts. You're bringing the whole issue of domestic  
2 violence and how it's handled within the state to the  
3 forefront. If there is anything that Ventura County can  
4 do to help, we would be more than happy to help.  
5 It's -- again, I think it's one of the main  
6 issues. When you think about that 100 percent of those  
7 people in San Quentin witnessed or were victims of  
8 domestic violence, I think we found the answer to a lot of  
9 criminal behavior. And I think we now just need to  
10 address the root cause, and hopefully through your  
11 commission and your efforts, those issues will come to  
12 light and they will be addressed.  
13 Again, thank you very much.  
14 JUSTICE KAY: Thank you very much.  
15 Anybody have any question?  
16 HONORABLE KOPP: I know it may not be strictly  
17 pertinent to domestic violence but I'm curious, out of the  
18 total number of probation officers, how many do you assign  
19 to domestic violence?  
20 CHIEF PROBATION OFFICER STAPLES: Right now I  
21 have eight probation officers assigned to the 1,300 cases.  
22 And then, as I indicated, I have some cases in intensive  
23 supervision and probably 15, 20 in intensive supervision  
24 that are handled by other officers.  
25 HONORABLE KOPP: Out of how many? How many total

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1 P.O.s?  
2 CHIEF PROBATION OFFICER STAPLES: Oh, how many  
3 total? Oh. Working both adults and juveniles, I think  
4 there's probably --  
5 HONORABLE KOPP: No, just take the adults.  
6 CHIEF PROBATION OFFICER STAPLES: Just adults?  
7 Probably between 55 and 60.  
8 HONORABLE KOPP: Thank you.  
9 JUSTICE KAY: Anyone else?  
10 All right. Let me ask the court reporter, do you  
11 want to take a break now or do one more speaker? There  
12 are five more speakers.

13 THE REPORTER: You can do one more speaker.  
14 JUSTICE KAY: All right. I'd like to hear from  
15 Alyce LaViolette. While she's coming up, Miss LaViolette  
16 is a batterer intervention program provider and an  
17 international expert on domestic violence. She provides  
18 education and training on batterers' intervention issues,  
19 and we're privileged to have her here today.  
20 MS. LAVIOLETTE: Thank you very much. And thank  
21 you, Bobbie.  
22 She told me I could do a wish list today of all  
23 the things in our dream world that we want to have happen.  
24 And I was really hoping you'd take a break because I hate,  
25 you know, not getting a break after sitting all that time,

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1 so I hope I don't bore the heck out of you.  
2 Anyway, we have Judge Andrews, which I consider a  
3 real plus, and we have Gladys Nagy in probation,  
4 supervising us, which I also consider a plus.  
5 One of the things that I would say is -- I just  
6 want to talk about what I've seen that works. One thing  
7 is that 52 weeks in a batterer's program is an absolute  
8 minimum for most of the people, even if you look at the  
9 range of people that we're dealing with.  
10 And I travel around the country. One of the  
11 things I hear -- because we're the only place, besides, I  
12 think, one of the states I think that starts with I, that  
13 I don't remember -- that does 52 weeks, a minimum of 52  
14 weeks. If you look at any other kind of behavior, that  
15 you're trying to change as chronic and you look at things  
16 like substance abuse, the first year is not about  
17 recovery. The first year is about not doing the bad  
18 thing. And they're focused on that.  
19 And I'd say the same thing with batterer's  
20 treatment. That really when they start to change and  
21 internalize things, it takes them longer than that. And  
22 most of the people in my program would say, "Gee, I can't  
23 believe it went that fast." They thought a year was going  
24 to last forever.  
25 And one of the things that I look at are the

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1 numbers of people that we've had who will stay longer than  
2 their year, voluntarily. The people who refer friends.  
3 The people who will come back for a tune-up. And those

4 are some of the things that I look at as success in a  
5 program.  
6 I love what you're doing in Ventura. I think in  
7 Long Beach we're doing some very similar things in terms  
8 of cooperatively working together. One of the best things  
9 that I had happen very early on was my connection with  
10 probation, when we had pre-plea diversion -- which I have  
11 to tell you I actually liked, because there was some  
12 flexibility in the law with pre-plea diversion. As the  
13 law has gotten more rigid, I think it's been more  
14 difficult in some ways to get people to cop a plea and to  
15 get the help they need and for families to come forward.  
16 And when recidivism is our only measure of success, we are  
17 really not using the right measure.  
18 I can tell you I've been working with victims of  
19 domestic violence since '78, 1978. And I've been working  
20 with perpetrators since 1979. And I know many women,  
21 female victims of domestic violence who will not go back  
22 and report again because of the cost to them in so many  
23 ways. Either they didn't like the result of the court;  
24 they didn't feel supported; or they got back together with  
25 the perpetrator; they were worried about having their

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1 children removed through DCFS. And I think we ought to  
2 try to figure out some ways that the people we work with  
3 are going to lie less to us, because there is a tendency  
4 based on certain amount of rigidity, that creates them  
5 lying to us.  
6 One of the things we do in Long Beach that I  
7 like, is we have a children's room. We actually still  
8 like each other in Long Beach so we don't have a lot of  
9 territoriality and we've really worked closely. It sounds  
10 like you guys are doing that too, which I think is great.  
11 And we have a children's daycare center that's staffed for  
12 the child, children's advocates and every child that comes  
13 into court, they are in that daycare center. And it's  
14 beautiful. It's a really nice center. And every child  
15 gets to pick a book before they leave and leave with a  
16 book and leave with something for that day so...  
17 I like having domestic violence courts. I look  
18 at Judge Andrews, Judge Isles, Judge Karsh, Judge Toy --  
19 Toy White -- and I think one of the things that happens is  
20 the BIPs can work closely with people they trust. And  
21 I've had -- and I'll just give this situation with Judge  
22 Andrews -- where I had a man in the group violate. Now,  
23 one of the ways that we have to walk the line is if we --  
24 depending on how we come down on somebody who violates --  
25 and, by the way, most of them violate at one level or

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1 another; they violate court orders because they're used to  
2 pushing on their partners and having them return. So they  
3 don't believe that -- you know, they believe it's going to  
4 work for them.

5 So the violation of a court order is not --  
6 particularly a restraining order or a protective order is  
7 not usual.

8 Depending on the degree of violation -- I had a  
9 man who violated by going into his partner's place and  
10 destroying the hard drive on the computer. Now, I'm not a  
11 big computer person, but I understand it's like giving the  
12 computer a frontal lobotomy. So what happened was, we  
13 wouldn't have known that. His partner didn't call us. We  
14 wouldn't have known that unless he came in.

15 So now I have to decide, that's a violation, what  
16 are we going to do with that? So what I said is, "Because  
17 I trust Judge Andrews, I want you to go tell Judge Andrews  
18 what you've done. And because you came in and volunteered  
19 this information, I'm going to write you a letter that  
20 says we wouldn't have known about this if you hadn't told  
21 us."

22 And I sent him to Judge Andrews. And she scared  
23 him. She said, "You need legal representation," which  
24 scared the heck out of him. And then she extended his  
25 time in group. When he came back, it didn't deter the

1 other men from talking, because what they felt was it was  
2 a fair consequence.

3 I believe in logical consequences. But I think  
4 they have to be logical. And they have to be things that  
5 don't -- if we're going to protect battered women, these  
6 guys have to be able to talk in group. So I think that's  
7 really important.

8 Flexibility in the relationship with probation.  
9 I know certain counties where they tell the BIPs how to do  
10 their programs, what kind of technique to use to do their  
11 programs, what they can charge, without regard really to  
12 how long an intake is, whether it's an individual intake  
13 or a group intake, whether the program is funded or not  
14 funded, what the ancillary services are that are done by  
15 the program, how large the groups are.

16 In L.A. County if you have two facilitators you  
17 can have 20 people in a group. I don't believe in that.  
18 Because I came out of the battered women's movement, I  
19 think these guys need time to talk. But we cut our income

20 by eight people in group because we do it from 10 to 12.  
21 I know other programs that do not have that luxury. And  
22 they have to have the programs, with more people. Because  
23 we all do a sliding scale.  
24 I would like the courts to enforce that these  
25 guys have to pay the program before they get off

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1 probation. Judge Andrews doesn't let them sky out without  
2 paying the programs. And I don't expect the state to fund  
3 these programs. I expect though that people get paid for  
4 the work that they do.  
5 And I like good orders. We're getting more and  
6 more orders for anger management, and they're not --  
7 they're out of compliance with the law because although  
8 they're pleading to a lesser charge, the incident is still  
9 between the two people that are involved. There's still  
10 people that are involved with each other. And we're  
11 getting people who are getting 10 weeks of anger  
12 management on a DV. And I like anger management. It's a  
13 very nice euphemism for DV and people like to say they're  
14 going to anger management because it's, like, cool and DV  
15 isn't.  
16 So I don't care if people say 52 weeks of anger  
17 management, but I would like to see them get those good  
18 orders, that say you're in here and you need to be in here  
19 and you need to comply with the program.  
20 Also, occasionally -- and probably over the last  
21 28 years it's been not more than 10 times -- that I have  
22 asked the court to extend somebody in group. And these  
23 are usually people, by the way, I don't want in my group.  
24 But I think they need more time. And they're very  
25 difficult to work with. Only a couple of times -- and

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1 this hasn't been in Long Beach, by the way, because I have  
2 a West L.A. program too -- but only a couple of times have  
3 those people been extended. I don't think most of the  
4 programs are going to ask for people to be extended if  
5 they, you know, don't need to be extended. So, I think  
6 honoring each other...  
7 I feel, you know, with Gladys and with Jim Wright  
8 before, that there was a very respectful interaction  
9 between probation and the BIPs. We did -- the probation  
10 officer out of Long Beach back in 1980 worked with me and

11 the pre-plea diversion person to create an 8-hour training  
12 program for probation. I did that for over a decade. It  
13 gave us an opportunity to really work together.

14 So I would suggest, and I think it's important  
15 that we have training that is not in-house but that brings  
16 in people from outside of whatever institution it is. For  
17 instance, at the BIP meetings we've had the city attorneys  
18 come speak to us. We've had district attorneys. We've  
19 had DCFS. We've had the presiding judge. We've had Judge  
20 Andrews. But we try to bring people who are doing the  
21 work -- we've had probation -- because we learn from them  
22 the limitations that they face, and we also make a  
23 connection.

24 I think that the police department, I think that  
25 anybody in the criminal justice system, that training

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1 should be provided by people who also are working in the  
2 systems that you're dealing with as a way to make the  
3 connection. And also as a way to get firsthand  
4 information.

5 When the Attorney General's task force came  
6 around to do hearings, I said to Casey -- and they were  
7 doing hearings on BIPs -- I said, "What's interesting to  
8 me is that BIPs were never consulted about what works in  
9 BIPs. And I think it's really important that BIPs be seen  
10 as part of the team.

11 We're front line advocates for the victims of  
12 domestic violence. Many of us came out of the battered  
13 women's movement and have a real commitment to this issue.  
14 And I think we need to be seen in that light.

15 Let me see. What else. That could be it.

16 Oh, flexibility in the law. I really like to see  
17 laws that are less rigid and more, you know, flexible. I  
18 think it works a little better.

19 I can't think of anything else.

20 JUSTICE KAY: Are there any questions at the  
21 moment?

22 MS. LaVIOLETTE: Yes?

23 HONORABLE STOUT: How long do you think the  
24 Batterers Intervention Program should be from a clinical  
25 point of view, on average?

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1 MS. LaVIOLETTE: I think probably about a year

2 and-a-half before you see people really begin to  
3 internalize. Now, that's in general. And there's -- you  
4 know, you have to look at the range of people that come  
5 into group. Because the people we're most worried about,  
6 the people who wind up killing and injuring -- and by the  
7 way, I would really like to see us look at death review  
8 and find out how many of the people who are the victims  
9 who have been killed, have been killed by somebody in a  
10 program. Or injured by somebody in a program. Because I  
11 remember during the O.J. Simpson trial, the men in my  
12 program all believed he was guilty. And they said, "If he  
13 had been in our program, he wouldn't have done that."

14 And so I think there's -- we also, much like the  
15 D.A.R.E. programs, we don't know about the preventative  
16 aspect of BIPs. But I think if we can get a year  
17 and-a-half -- and I think what we can do to make that more  
18 flexible is to do review on it after a year. And for  
19 people to -- because we work together and trust each  
20 other, to be able to say, you know, "in this particular  
21 case."

22 I used to meet with the probation officers over  
23 lunch and we'd go through our cases together. And it was  
24 a great way of doing it.

25 JUSTICE KAY: All right. Thanks very much.

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1 HONORABLE BORACK: Just a point of clarification.  
2 When you say you would like to see more flexibility in the  
3 law, it's obviously not in shortening the time for the  
4 batterers treatment program. What kind of flexibility are  
5 you advocating?

6 MS. LaVIOLETTE: Well, I think one of the things  
7 we're seeing is a backlash. For instance, I like  
8 pro-arrest policies as opposed to mandatory arrest. I  
9 think we have to look at the -- because, in effect, a lot  
10 of the policy right now or the way it's being done is a  
11 pro-arrest policy. With a mandatory arrest policy we've  
12 seen the backlash to actual arrest.

13 With TROs I like to see -- I think Judge Isles  
14 did this -- where she suggests -- and I've seen Judge  
15 Andrews do it -- where they hook up with a victim advocate  
16 so we have some help with the victim and maybe they go to  
17 a personal encounter class.

18 But it's a suggestion and so -- you know.

19 With the law -- for instance, we have a law right  
20 now that snuck by on batterers' treatment -- and I don't  
21 know who did it -- but if you miss three, on the fourth  
22 you're supposed to go back to court. These are excused  
23 absences. What it says to me is we're not trusting the  
24 people in batterers intervention to monitor these people  
25 to show up.

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1           If I have people in shift work -- I've got a guy  
2 right now who's going to back to Iraq. I'm going to have  
3 to turn him in after four sessions because he's going to  
4 miss. You know, and then he's coming back, because he's  
5 only going back for a month. But he's going to have to go  
6 to court when he goes back which means he has to take of  
7 work and that sort of thing. It's an excused absence.  
8           What I'd like to see is us have a working  
9 relationship where we can say, "Hey, I'm calling to let  
10 you know, your honor, that, this guy is on shift work" or  
11 whatever. "He's not a flake. He's doing a good job."  
12 You know, that sort of thing.  
13           Mandatory policies I have seen backfire. But I  
14 believe in logical consequences. I think arrest and pro-  
15 arrest policies are good policies. I think training is a  
16 good policy.  
17           And in the mandatory thing, I think we get into  
18 trying to control people who really suck. And I think  
19 people who really suck just learn to do it better. But it  
20 doesn't stop the people. Those folks. The training gives  
21 people the information if it's practical and makes sense  
22 to really, you know, make a difference, I think.  
23           JUSTICE KAY: Thank you very much.  
24           MS. LaVIOLETTE: You're welcome.  
25           JUSTICE KAY: We'll have a very short break now

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1 and we're going to press to finish the agenda as close to  
2 3:00 as we can.  
3  
4           (A recess was taken at this time.)  
5  
6           JUSTICE KAY: All right. The next speaker is Ms.  
7 Eve Sheedy. She's from the Los Angeles City Attorney's  
8 Office that prosecutes the vast number of misdemeanor  
9 cases in Los Angeles. Miss Sheedy serves as a Legislative  
10 Policy Advisor on domestic violence issues for the City  
11 Attorney's office.  
12           Ms. Sheedy?  
13           MS. SHEEDY: Good afternoon. Now that you've  
14 done that introduction, you've got my first two sentences.  
15           On behalf of Los Angeles City Attorney, Rocky  
16 Delgadillo and myself, I want to thank you for all of the



17 wonderful work you've done on the Guidelines and  
18 Recommended Practices. I think they're passing out my  
19 written comments. I'll try to track those and add at  
20 least some responses to what I've heard here today.  
21 Your work is appreciated not only for the content  
22 of your proposals, but also for your recognition that the  
23 fair administration of justice requires policies and  
24 procedures specific to domestic violence cases in both  
25 civil and criminal courts. And I will say, I walk around

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1 forever saying domestic violence is different. So I truly  
2 appreciate your recognition of that and the need for  
3 special policies in that regard.  
4 The Los Angeles City Attorney's Office is the  
5 third largest municipal law office in the nation. Our  
6 office prosecutes all misdemeanor offenses in the City of  
7 Los Angeles. We review nearly 100,000 misdemeanor cases  
8 each year including 11,000 domestic violence cases. We  
9 prosecute cases at the Central Criminal Court as well as  
10 branch courts from San Pedro to San Fernando. We operate  
11 a dedicated Family Violence Prosecution Unit that  
12 vertically prosecutes our most serious cases throughout  
13 the city. It's fair to say that many of our domestic  
14 violence cases would be considered felonies in other  
15 jurisdictions. And I'll give you one example.  
16 We recently successfully prosecuted a case in  
17 which the defendant, who was a martial arts expert, placed  
18 a plastic bag over his victim's head and proceeded to  
19 strangle her. It was filed by the police officer as an  
20 attempt murder case. She survived.  
21 And I just wanted to note, I wasn't here for what  
22 was talked about, about animal abuse, but the act  
23 preceding the strangulation a week before the defendant  
24 had got into his backyard in the valley and shot her two  
25 dogs with his handgun, because amongst other things, she

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1 had treated her animals like children, as many people do,  
2 so...  
3 And I will say I used to prosecute domestic  
4 violations cases in Santa Monica. There are certainly --  
5 I had many cases of people throwing animals off balconies,  
6 throwing them out of cars on the freeway. It is a fairly  
7 constant -- unfortunately -- act within the context of a

8 domestic violence relationship.  
9 With regard to that strangulation matter, our  
10 office obtained a conviction and a multi-year sentence.  
11 We routinely review and file domestic violence cases  
12 involving serious injury and defendants with serious  
13 criminal records.  
14 With regards to my remarks, I'm apparently very  
15 obedient because I actually have answered the questions  
16 that you've listed and I realize that as I went through  
17 it, most other people didn't do that, so I'm more obedient  
18 than I thought I was.  
19 Your initial inquiry is "what benefits will be  
20 gained by implementation of the proposals?" One  
21 significant benefit of the implementation of the proposals  
22 is consistency. In light of the size of the adversity of  
23 the criminal bench in Los Angeles, our attorneys are often  
24 confronted by differing interpretations of the law as  
25 regards domestic violence.

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1 For example, the Guidelines confirm that the  
2 court is required under Penal Code Section 1203.097 to  
3 require "completion of a 52-week batterer's counseling  
4 program." In our courts, various interpretations of this  
5 requirement exist. In one court the judge has determined  
6 that it's appropriate for a defendant to double up on  
7 classes so that a 52-week program is actually a 26-week  
8 program. In another court, whereas the judge usually  
9 requires defendants to attend a 52-week program, however,  
10 if 18 months or more has elapsed since the time of the  
11 conviction, the court interprets that to enable her to  
12 order the defendant to complete the 52-week program in  
13 less than two weeks. So once you go out of that 18-month  
14 period, it's been interpreted to mean that there's no  
15 longer the 52-week requirement.  
16 So under this interpretation, a defendant who  
17 warrants who otherwise fails to abide by the terms of  
18 Penal Code Section 1203.097 is rewarded with less  
19 astringent requirements.  
20 Guidance and consistency in this area is needed.  
21 It's our position that the words of the statute,  
22 "Successful completion of a batterer's program for a  
23 period of not less than one year" means that the defendant  
24 is required to attend the program for at least one year.  
25 The reasons underlying this are good ones. And as Alyce

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1 indicated, it takes at least a year to complete the  
2 curriculum of the batterer's intervention program.  
3 Additionally, during the course of the program,  
4 the batterer's conduct is being monitored by a third  
5 party. So the victim is safer during that time because  
6 somebody else is watching and able to connect to law  
7 enforcement or the court, if necessary to protect the  
8 safety of the victim. So any time that is shortened,  
9 you're increasing the risk.  
10 A similar issue arises with regards to  
11 termination of probation. Despite the mandatory three  
12 years of probation required under Penal Code Section  
13 1203.097, at least one of our bench officers often agrees  
14 to terminate probation at the time of completion of the  
15 batterer's treatment program, regardless of when that  
16 occurs.  
17 Perhaps a most significant issue raised by early  
18 termination is the concurrent termination of the criminal  
19 protective order often without notice to the victim. At  
20 the time of sentencing the victim is apprised that the  
21 criminal protective order will be in place for three  
22 years. Early termination of this -- particularly if the  
23 victim is not present in court -- often leads to the  
24 victim's incorrect assumption that she still has a valid  
25 protective order. She may not learn that the order is not

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1 valid until the moment when she's calling upon law  
2 enforcement to protect her.  
3 And although I'm trying to stick to the criminal  
4 law side of this, I'm also very active in the domestic  
5 violence various communities throughout L.A. and I will  
6 say we have at least one family law judge who will not  
7 issue a domestic violence protective order if a criminal  
8 protective order is in place.  
9 So in the event that the criminal protective  
10 order is terminated, the person is without coverage and  
11 probably at that point it is too late for that person to  
12 obtain a domestic violence protective order in civil court  
13 because too much time has passed.  
14 For these reasons implementation of the  
15 Guidelines will be helpful. When the practice of the  
16 court is clearly defined, the result is more likely to be  
17 consistent. As described above, the result of such  
18 consistency will result in an increase of safeguards for  
19 domestic violence victims.  
20 An additional benefit to implementation of the  
21 Guidelines is increased communication. The Guidelines  
22 suggest the participation of the court in domestic  
23 violence coordinating councils. We strongly agree and

24 believe that such participation yields tremendous  
25 benefits. By creating a forum for discussion outside of

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1 the courtroom, stakeholders have the opportunity to  
2 discuss practices and procedures, share their expertise  
3 and frankly, to get to know one another. And in my  
4 statement I say in Los Angeles -- I really mean to say in  
5 downtown Los Angeles -- we have a Domestic Violence  
6 Planning Committee that is organized and run by the  
7 Presiding Judge of Family Court. The Committee meetings  
8 are regularly attended by representatives of the Family  
9 Court bench, the District Attorney's Office, the City  
10 Attorney's Office, the Public Defender's Office, the  
11 Probation Department, Legal Aid, and various Domestic  
12 Violence Service Providers, including one individual who  
13 operates a Batterers Intervention Program.

14 And I'd like to say we are lucky in Los Angeles  
15 County because we do have a representative of the Public  
16 Defender's Office who comes to most of the Domestic  
17 Violence Councils and Committee meetings, so it enables us  
18 to have that input from the defense bar, which is often  
19 lacking in some domestic violence committees.

20 We strongly support your recommendation that the  
21 bench participate in these committees. In urban areas  
22 like Los Angeles, where courtrooms are located in  
23 different buildings, the opportunity for direct  
24 communication is limited and these committees facilitate a  
25 coordinated response to domestic violence cases.

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1 Finally, the Guidelines set forth practices  
2 addressed to the issue of firearm relinquishment. We're  
3 very supportive of this effort since the issue of  
4 enforcement of these provisions has proven to be so  
5 difficult. Firearms in the hands of batterers may lead to  
6 injury and even homicide. Every partner in this system  
7 must continue to actively work to design ways in which to  
8 retrieve firearms.

9 In that regard, we wish to highlight a bill  
10 passed last year that may assist in the practices outlined  
11 by the task force. And you may well be aware of this --  
12 and again, I'll refer to Senator Kehoe's work, which was  
13 referred to earlier this morning -- but SB585, which I  
14 worked on with Senator Kehoe amended Family Code Section

15 6389 as it relates to the relinquishment of firearms, and  
16 among other changes requires immediate relinquishment of  
17 firearms upon request of a law enforcement officer.  
18 Therefore, in appropriate circumstances an officer serving  
19 a domestic violence protective order may be able to  
20 retrieve firearms at the time of service.

21 Additionally, the statute now includes an express  
22 provision that states that failure to timely file a  
23 receipt shall constitute a violation of the protective  
24 order. This provision may assist the court and  
25 prosecutors in addressing the failure to contact upon an

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1 order of relinquishment. Any practice that results in an  
2 increase in the number of firearms collected and/or  
3 destroyed will provide a significant benefit to domestic  
4 violence victims and to the entire community.

5 The second inquiry posed is whether the  
6 guidelines create any unintended consequences. We do not  
7 see any unintended consequences of the Proposed Guidelines  
8 and Recommended Practices regarding criminal procedure.

9 The third inquiry of the task force asks us to  
10 prioritize which of the guidelines and practices are of  
11 particular importance. The short answer is that they're  
12 all important. But from a prosecutorial and public safety  
13 perspective, there are two critical guidelines. First, as  
14 discussed above is Domestic Violence Procedure Guideline  
15 number 50, which regards the terms of probation. Adoption  
16 by the court of a guideline encouraging imposition of the  
17 express terms of Penal Code Section 1203.097 will ensure  
18 fairness, consistency and safety.

19 Second are the guidelines regarding firearm  
20 relinquishment. As recognized by the task force, this is  
21 a tremendous problem that poses a significant danger to  
22 domestic violence victims and their family.

23 The fourth inquiry of the task force asks if  
24 there were any omissions. There's one additional proposal  
25 that we ask the task force to consider. We suggest the

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1 implementation of annual judicial training on new domestic  
2 violence related laws. Although we recognize there are  
3 many different areas of laws which judges must track on a  
4 yearly basis, there is frequent change in state law  
5 related to domestic violence. My office and a number of

6 other entities work each year on domestic violence related  
7 legislation to ensure that the law continues to provide  
8 adequate protection to victims of domestic violence.  
9 Accordingly, and in light of the work of this  
10 task force recognizing the need to focus on judicial  
11 response to domestic violence, we believe that training  
12 focused on this area would be beneficial for all bench  
13 officers, not just those who deal with domestic violence  
14 matters.  
15 Given the shifting assignments and the likelihood  
16 of domestic violence issues arising in a number of  
17 different legal context, training for all judges would be  
18 beneficial. There are many agencies which will provide  
19 such training for free and I echo Alyce said in that by  
20 bringing in people from the outside, it creates an  
21 important link within the community.  
22 Additionally, the California Partnership to End  
23 Domestic Violence, CPEDV, which is the statewide domestic  
24 violence coalition, provides annual training on the new  
25 domestic violence laws. And I urge this panel if they

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1 require any information with regards to statewide  
2 practices, to contact the Partnership. I am on the board  
3 of the Partnership. Karen Cooper is the President of the  
4 board and we can facilitate that connection if need be.  
5 But we are becoming much more unified and our ability to  
6 respond to questions from the bench or any other entity  
7 has gotten a little bit quicker and a little bit more  
8 effective.  
9 The final inquiry of the task force asks what  
10 resources are required to implement the proposals. Not  
11 surprisingly, our answer is funding. For example, the  
12 guidelines propose that the prosecution should contact the  
13 domestic violence victim prior to arraignment. While we  
14 agree that this practice is the preferred one, and we  
15 strive to do this in our domestic violence cases, we  
16 simply do not have the resources to do this in each  
17 matter. Absent additional funding, we cannot  
18 realistically meet the proposed goal of reaching all -- or  
19 even most -- domestic violence victims prior to  
20 arraignment.  
21 Additionally, there have been references  
22 throughout the day to -- for example, as they were saying  
23 in Ventura -- everybody has -- every domestic violence  
24 defendant, convicted defendant has a probation officer.  
25 We don't have the funding to do that in Los Angeles.

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1           And another theme that comes up -- at least as  
 2 regards prosecutors -- is our failure to prosecute  
 3 restraining order violations. We just do not have either  
 4 the courts or the facilities in our office to file minor  
 5 restraining order violations. Absent significant increase  
 6 in resources, that's not a viable means of enforcing those  
 7 orders in Los Angeles.

8           In closing, we'd like to thank each member of the  
 9 task force for the opportunity to speak here today. We  
 10 truly appreciate your in-depth analysis of domestic  
 11 violence and your creation of Guidelines and Recommended  
 12 Practices that will undoubtedly work to make domestic  
 13 violence victims safe and hold batterers accountable.

14           And I just want to mention one more thing. One  
 15 thing locally the Los Angeles Domestic Violence Council is  
 16 going to do over the next year, year and-a-half is -- I  
 17 also co-chair the Legal Issues Committee of that Council,  
 18 is we're going to do --create a countywide study of  
 19 restraining orders, an organized countywide study where  
 20 we're going to try to put together something that really  
 21 analyzes sort of all of -- everybody's activities in that  
 22 regard and maybe ultimately make some viable  
 23 recommendations.

24           But it's a work -- it's just starting, so our  
 25 first step is to just to go out into the community. We're

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1           going to canvass judges as well, to see what should be  
 2 addressed.

3           So we are actively looking into that to try to  
 4 improve that system from all sides.

5           So thank you. Do you have any questions?

6           JUSTICE KAY: Thank you very much.

7           Questions for Ms. Sheedy?

8           JUSTICE KAY: All right. Now, we will now  
 9 proceed to hear from Mr. Rick Layon. Mr. Layon has been a  
 10 Member of one of the Judicial Council's important domestic  
 11 violence committees that oversees the development of  
 12 judicial education on domestic violence issues. Mr. Layon  
 13 has assisted in making sure that the education developed  
 14 is balanced and fair.

15           Mr. Layon?

16           MR. LAYON: Good afternoon. Thank you very much.

17           The two general areas I wanted to touch on this  
 18 afternoon are, generally speaking, the areas that are the  
 19 bur in the defendant's saddle or the defense  
 20 practitioner's saddle repeatedly in domestic violence  
 21 matters.

22           And the theme that I hear -- and as Judge Kay  
23 mentioned -- I sit on this education project with Violence  
24 Against Women that establishes judicial training -- and  
25 this general theme that I hear repeatedly on that

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1   committee as the bench officers and the members of the  
2   committee are talking is there's a cookie cutter approach  
3   the legislature has imposed on the bench. And it's  
4   reminiscent of, you know, the famous wag that Ronald  
5   Reagan announced some, I don't know, 15 years about the 10  
6   most dreaded words in the English lexicon, which is "We're  
7   from the government and we're here to help." And, in  
8   fact, what we have here is the government interjecting  
9   themselves or injecting themselves into domestic  
10   relationship.

11           The two general areas that I wanted to touch on  
12 today were this area of protective orders generally. An  
13 EPO under the Family Code 6250, what I characterize as a  
14 pre-dispo or a protective order under Penal Code Section  
15 136.2. And then the domestic violence protective order  
16 under the Family Code. So I wanted to talk about those  
17 protective orders generally as well as Fifth Amendment  
18 issues that I see cropping up repeatedly for which there  
19 is just no guidance for the bench or for the practicing  
20 members of the defense bar.

21           Specifically the difficulty with the EPOs that  
22 are issued -- and of course those are issued ex parte,  
23 they're issued at a time when a defendant is arrested --  
24 and repeatedly what we see in those situations is there is  
25 no provision to get them modified. They issue for a very

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1   limited period of time, five judicial days -- I'm sorry,  
2 strike that -- five judicial days or seven calendar days.  
3 But nevertheless, if you have an individual where an EPO  
4 has issued against and they have, for example, they have a  
5 business at home or they make widgets in their barn at  
6 their house and they have to get these widgets out,  
7 there's absolutely no way to get that order modified.  
8 Those orders are issued ex parte by a bench officer.  
9 There's no procedure to get that EPO back in front of a  
10 bench officer.

11           It's especially problematic when you have --  
12 typically these folks are -- our clients, the defendants



13 are taken into custody -- they bail out. Their  
14 arraignment is put out way into the future. So again,  
15 it's not like we have an arraignment judge to address  
16 these issues. We have nobody.  
17 So that's the biggest issue with the EPOs.  
18 The other more troubling or more meddlesome  
19 problem is with these protective orders under Penal Code  
20 Section 136.2. And they're troubling in a number of ways.  
21 And of course they can only issue if there's good cause.  
22 And here -- and I don't mean to be talking out of both  
23 sides of my mouth because at one point I'm going to be  
24 complaining that there's too much discretion and another  
25 point I'm going to be complaining that there's not enough

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1 discretion.  
2 Here's the point that I'm complaining about too  
3 much discretion. And of course under 136.2 a bench  
4 officer can issue a protective order pre-dispo with a  
5 finding of good cause. But what we see repeatedly -- and  
6 I see this in different courts and we see it, the criminal  
7 defense bar sees it a number of times, or too often -- is  
8 where the victim comes in, the complaining witness comes  
9 in and says, "I don't want a protective order. I don't  
10 have any fear for my safety. I don't have any fear for my  
11 children's safety. I want the defendant to come home."  
12 And nevertheless, notwithstanding the complaining witness'  
13 vehement objections to a restraining order issuing or a  
14 protective order issuing, the court does it anyway. And  
15 it takes on this Orwellian atmosphere where "We know best.  
16 We're from the government."  
17 And you have that coupled with prosecutors, both  
18 Deputy City Attornies and Deputy D.A.s taking the position  
19 that they want these protective orders to issue because  
20 they know better. We have prosecutors taking the position  
21 that "We want these protective orders to issue because we  
22 don't want the victim and the defendant corroborating  
23 their testimony or pulling their testimony or the evidence  
24 together against the prosecution, "which is contrary to  
25 the intent of the statute. And again, takes on somewhat

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1 of an Orwellian concept or atmosphere.  
2 Finally, as to what is discussed quite a bit on  
3 the committee, the Education Committee is the notion under

4 the Family Code, whether or not the bench has the ability  
5 to issue non-CLETS orders. And we have -- there have been  
6 a number of bench guides that have been generated from our  
7 committee as to training and guidelines and the best  
8 practices for bench officers. And repeatedly the  
9 discussion goes to -- at the end of the day the discussion  
10 is it's unclear whether or not the statute provides or  
11 allows for a non-CLETS order.

12 Many bench officers would like to be able to  
13 issue or be able to issue a non-CLETS order. But they're  
14 unclear. They have no guidance either from the  
15 legislature or from the statutes or from -- from anybody.

16 There are some instances where non-CLETS orders  
17 have significant utility. They're certainly not the norm.  
18 But again, in modifying or in generating or suggesting a  
19 proposed legislation, there should be the ability for a  
20 bench officer to issue that. Especially to avoid firearms  
21 limitations if you have folks that are law enforcement  
22 officers or in the military, it's critical to be able to  
23 issue a non-CLETS order.

24 So that was the observations that I had and that  
25 we had regarding protective orders generally.

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1 The Fifth Amendment issues embrace two specific  
2 areas. One is the firearm relinquishment, that there,  
3 again, has been much discussion and vigorous debate about  
4 whether or not during the course of inquiry of a bench  
5 officer as to whether or not a restrained person has a  
6 firearm, whether it implicates the Fifth Amendment.  
7 That's one issue.

8 The second issue is when a temporary order  
9 issues, and the hearing is set as to whether or not to  
10 issue the permanent junction. The second issue evolves  
11 where there's a pending criminal case and the restrained  
12 person comes in with their criminal attorney and the  
13 criminal attorney asks the bench officer, "Can we leave  
14 the temporary order outstanding for a period of four  
15 months, six months so my client can resolve his criminal  
16 case so as not to implicate his Fifth Amendment issues?"  
17 In other words, he can't file a written response. He  
18 can't make a statement in this quasi-civil, quasi-criminal  
19 proceeding because he's waving his Fifth Amendment right.

20 As to the first issue, firearm relinquishment.  
21 There are some bench officers that very artfully inquire  
22 as to whether or not the restrained -- I'm sorry, I keep  
23 saying that -- the person to be restrained, the restrained  
24 person owns or possesses a firearm. And it creates a --  
25 really it's a Hobson's choice. It creates a situation

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1 where if, if somebody wants to do the right thing, if that  
2 restrained person really does have a firearm and they  
3 really want to relinquish it, if they're a convicted  
4 felon, a Hobson's choice. Do I do the right thing and  
5 cough up the firearm? And by doing so, do I implicate  
6 criminal liability or do I implicate myself in criminal  
7 liability under 12021 of the penal code?

8         There doesn't seem to be any clear judicial or  
9 statutory -- the ability for the judiciary to exercise  
10 immunity in that sort of a situation. And in my view, I  
11 think that is sorely lacking.

12         And then finally under the Fifth Amendment issues  
13 that I was discussing, this issue -- a policy for the  
14 bench or some guidance for the bench officers to allow a  
15 temporary order to remain extant during the pendency of a  
16 criminal case. The code indicates that a hearing must be  
17 held within 20 days, I think. 25 days if there's good  
18 cause. But it says "a hearing," not "the hearing." And  
19 it seems to me that there needs to be some guidance to  
20 bench officers in this regard because the approach seems  
21 to be a bit willy-nilly as to whether or not to leave the  
22 temporary order outstanding to give a criminal defendant  
23 their full measure of rights under the Fifth Amendment.

24         So those are the issues that I wanted to address.  
25 And I certainly packed a lot in a very short period of

1 time.

2         But I certainly -- that's all I have, unless the  
3 panel has any inquiry of me, either as a criminal defense  
4 practitioner or as a member of the committee.

5         JUSTICE KAY: Any of our members want to ask Mr.  
6 Layon any questions?

7         Thank you very much.

8         MR. LAYON: Great. Thank you.

9         HONORABLE KOPP: So what's your recommendation --  
10 if you can even formulate one generally -- with the  
11 alleged victim who wants the respondent back in the house,  
12 and I don't want to grant that request?

13         MR. LAYON: You know, the way that the Code  
14 reads, the court can issue that protective order if it  
15 finds good cause. And in my view, I think that should  
16 be -- the presumption needs to be switched. And that is,  
17 when the victim comes in and requests that no protective  
18 order be issued, then the court should abide by that  
19 victim's request, unless -- so, in other words, turn the

20 presumption on its head -- and the court can -- I mean, we  
21 all know that there's a cycle of violence and there's  
22 these control issues, and those have to be addressed.  
23 But, you know, when a grown individual, competent  
24 individual comes in and says, "I don't want a protective  
25 order," again, it just strikes me as a bit Orwellian to

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1 say "We know better than you and we're going to issue it  
2 anyway."  
3 So it seems like some inquiry can be made of the  
4 complaining witness and if there's no reason to believe  
5 that there's control issues or any sort of over-reaching  
6 issue that would cloud her or his desire, then --  
7 HONORABLE KOPP: So unless I make a finding that  
8 they're liable to contrive future testimony and/or that  
9 the respondent is likely to cause future harm. I'm  
10 thinking out loud. That's where your recommendation  
11 leads.  
12 THE DEPONENT: Yes to the latter, no to the  
13 former. The code does not encompass or embrace keeping  
14 these folks away because of the possibility they may  
15 contrive testimony. That is the position that some  
16 prosecutors are taking, which I really have issues with.  
17 But yes as to the latter.  
18 HONORABLE KOPP: Well, Chairman, that might be an  
19 issue to consider.  
20 JUSTICE KAY: Thank you.  
21 HONORABLE MacLAUGHLIN: Yes, I have one question.  
22 And I'm mindful of the time, thus I'm reluctant to do it.  
23 Oh, your suggestion is to consider leaving the  
24 restraining order in effect without, in effect, what would  
25 be a permanent injunction during the pendency of the

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1 criminal case.  
2 MR. LAYON: Yes.  
3 HONORABLE MacLAUGHLIN: Why?  
4 MR. LAYON: Because in order for a criminal  
5 defendant to respond -- in order for --  
6 HONORABLE MacLAUGHLIN: Let me pose my question a  
7 little differently.  
8 MR. LAYON: Yes.  
9 HONORABLE MacLAUGHLIN: Are you concerned that in  
10 the permanent injunction there may be additional terms and

11 conditions beyond the restraining order? Because if you  
12 stipulate that there's some procedure for stipulating to  
13 the restraining order remaining in effect, the conduct of  
14 that defendant is going to be proscribed in some manner.

15 MR. LAYON: Correct.

16 HONORABLE MacLAUGHLIN: And probably in the same  
17 way that a permanent injunction would be, unless your  
18 concern is there may be additional terms and conditions  
19 that are imposed at the time of the hearing on the  
20 injunction or on the part of the TRO. And my concern if  
21 you're suggesting that, would be if those terms and  
22 conditions have to do with either custody or support  
23 issues, I question -- even though I think there's a  
24 weighing here, a weighing of the right of the defendant in  
25 the criminal action to be able to respond, but we also

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1 have to have concern about other members of the family who  
2 may be in jeopardy during this period of time.

3 So that's why I'm asking you the question.

4 MR. LAYON: I understand. And no, it's not that,  
5 it's not that at all. Certainly within -- and forgive me  
6 because I do criminal defense, I don't do family law --  
7 but I think that during -- when there's a temporary order  
8 that issues, issues of custody and support can be  
9 addressed. I think.

10 HONORABLE MacLAUGHLIN: They could be.

11 MR. LAYON: Okay. And that's not what I'm  
12 driving at.

13 HONORABLE MacLAUGHLIN: And they may not have  
14 been, originally.

15 MR. LAYON: And that's not what I'm driving at.

16 The bigger concern is if the permanent injunction  
17 issues, again there's this -- it goes without saying --  
18 but there's this aura of permanency. That's the end of  
19 it. It's much more difficult to rescind it downstream.

20 And so the idea of keeping the temporary order  
21 outstanding is, we set a future hearing downstream, down  
22 the road and then we come back to really hash out the  
23 issues to determine whether or not it's appropriate for  
24 the permanent junction to issue.

25 HONORABLE MacLAUGHLIN: But you can do the same

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1 thing even if the injunction issued, couldn't you?

2 MR. LAYON: Theoretically you can add it back on  
3 calendar -- yeah, absolutely.  
4 HONORABLE LEONARD: Well, I think before we get  
5 into this, as a former family law judge, we need to talk  
6 about it and read the law.  
7 MR. LAYON: Yeah.  
8 HONORABLE MacLAUGHLIN: I wanted to find out why  
9 you were suggesting --  
10 MR. LAYON: Right. This issue of permanency.  
11 HONORABLE MacLAUGHLIN: You answered my question.  
12 Thank you.  
13 MR. LAYON: Thank you very much. Thank you.  
14 JUSTICE KAY: Next we'll hear from Ms. Gladys  
15 Nagy, who is Supervising Deputy Probation Officer from Los  
16 Angeles.  
17 DEPUTY PROBATION OFFICER NAGY: Thank you for  
18 pronouncing my name right.  
19 JUSTICE KAY: I practiced.  
20 DEPUTY PROBATION OFFICER NAGY: Pardon?  
21 JUSTICE KAY: I practiced.  
22 DEPUTY PROBATION OFFICER NAGY: Ah.  
23 I'm delighted that this issue has been taken up  
24 and is really being looked at statewide. It's very  
25 serious.

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1 I am going to speak primarily to page 41,  
2 Proposal 67, which talks about the monitoring of domestic  
3 violence batterers. And you all have this, I think. I  
4 think -- and I'm speaking now for Los Angeles County,  
5 which I understand is totally different than every other  
6 County, and especially after hearing about Ventura, I was  
7 drooling. You know. I think our domestic violence  
8 monitoring unit should quadruple in size, which would make  
9 each DPO responsible for 16 batterer's treatment providers  
10 rather than 65. And that's what each monitor has now.  
11 And they can only make two visits a year, and visits to  
12 hear the groups twice a year. They also make additional  
13 visits to monitor the files and things like that.  
14 Also, we may not be able to do as good a job  
15 monitoring as other places because we have so much  
16 threshold languages that the groups are offered in -  
17 Farsi, Korean, Chinese, Russian, Tagolan, Samoan and on  
18 and on, and -- but we do have one of our two monitors who  
19 is fluent in Spanish, so he makes it to all these Spanish  
20 speaking groups so we know that they're okay.  
21 If we were able to have 8 instead of 2 -- and I  
22 know that one of your proposals is that you advocate for  
23 more funding for this -- we would then want our each new  
24 facilitator to take the same 40-hour course that each  
25 facilitator is required to take. If that makes them able

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1 to lead a group, maybe this would make our DPOs really  
2 able to monitor a group.

3 You know, by the way, we were recently -- it was  
4 a statewide audit, but L.A. was one of the counties that  
5 they really focused on. The Bureau of State Audits came  
6 to look at the domestic violence monitoring process, and  
7 they found that only about 50 percent of all defendants  
8 complete the 52-week course, which is pretty abysmal. I'm  
9 sure that's not true in your court. But it is in others.

10 The increased strength of our unit would also  
11 allow us to really monitor issues that have become very  
12 important. One is the indigent and low fee client. It's  
13 hard to know what the truth is. We hear on one side from  
14 the public defenders that most of the defendants are  
15 indigent or low fee and can't find a program to go to. We  
16 do require that each program take up to 10 percent low fee  
17 or indigent.

18 But the providers are hurting right now. There  
19 are -- we took on one new provider in the last nine years.  
20 And that was somebody that offered Samoan, because we had  
21 no one. But they actually have fewer defendants. We  
22 don't know what the reason is, why there are fewer  
23 referrals. But many of the programs have had to  
24 consolidate groups, some of even gone under.

25 So we can't ask them to take \$2 a client for 15

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1 clients. You know, that would be \$30, they'd all go  
2 under.

3 Judge Dymant here in this County in 1999 sent out  
4 something to all bench officers talking about this fee  
5 issue. And she asked that the court order the program to  
6 conduct the fee evaluation, rather than the court.  
7 Because that had been happening. We still have lots of  
8 courts that issue a blanket fee waiver, and -- but just  
9 hearing the defendant say "I'm poor, I can't afford it" --  
10 and we'd like to see that changed.

11 I know other people have talked about the anger  
12 management -- especially Alyce -- the anger management and  
13 domestic violence problem. We have so many orders for  
14 anger management that are for intimate partner violence.  
15 And we in the monitoring unit have asked our providers to  
16 put the defendant in the domestic violence group -- many

17 of them have both kinds of groups -- to put the provider  
18 in the domestic violence group and immediately write to  
19 the court. Explain what's going on. Explain that it's an  
20 intimate partner crime and ask that the order be changed.  
21 And it often is, actually.  
22 Also, if we had more monitors, we'd be able to  
23 monitor the facilitator, not just the program. Although  
24 there are 129 programs, we have 324 facilitators, at the  
25 moment. It fluctuates. So there might be one great

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1 facilitator and one lousy one in the same program, and  
2 we'd like to have them all monitored if possible.  
3 Let's see. Oh, yeah, the accelerated program.  
4 Eve talked about that. She mentioned one judge. I am  
5 holding right now, four minute orders from four separate  
6 judges, requesting accelerated programs. Ordering -- not  
7 requesting -- ordering that the defendant be allowed to  
8 take an accelerated program, go to two classes a week.  
9 This is so destabilizing for the group itself.  
10 They tend to get cohesive and work with one another. And  
11 when that happens, then they are all saying, "Well, I want  
12 that too." And it's not good. And also, it doesn't give  
13 the person -- less than 52 weeks, as Alyce was saying --  
14 less than 52 weeks doesn't give the person time to  
15 integrate with their learning, nor does it give the victim  
16 the safety of having at least a third person to talk to,  
17 to go to, someone who could be an advocate for her, or  
18 him.  
19 And then also someone was -- maybe it was Eve --  
20 talking about the mandatory requirement that people can  
21 only miss three absences, three classes -- whether they're  
22 excused or unexcused -- and that doesn't take into account  
23 emergencies and all the problems, and doesn't give -- the  
24 judge has no discretion, because of the law.  
25 So we force our programs to send in a report

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1 after the 4th, the 5th, the 6th -- forever -- absence.  
2 And that just causes a flood of paper.  
3 And there are too many things going on in too  
4 many courts here. I mean, they're just swamped. So they  
5 get this flood of paperwork. And then we hear from some  
6 providers that they have a genuine violation, something  
7 really egregious that just goes by the wayside, because



8 they're all kind of thought to be minimal.  
9 So the Domestic Violence Judicial Planning Group  
10 we had recently, we brought this up and it was suggested  
11 that the provider get a stamp that reads "violation" in  
12 big letters and a red ink pad and stamp it at the top of  
13 every egregious violation so that the court staff will be  
14 alerted and pull it out and make sure that the bench  
15 officer got to see it. And that made sense to me.  
16 Let's see. One thing about firearms I wanted to  
17 mention. We can't do anything about the misdemeanors, in  
18 probation. We don't supervise them here. If we did, by  
19 the way, it would be at least \$25 million dollars more it  
20 would cost the State of California, because at the present  
21 time we supervise about 2,500 felony probationers. And 25  
22 is a very low estimate of what it would cost, because we  
23 think that it's probably 15, maybe 20 percent only of our  
24 defendants who are felons.  
25 JUSTICE KAY: Can I interrupt you for a second?

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1 DEPUTY PROBATION OFFICER NAGY: Sure.  
2 JUSTICE KAY: 25 million more to supervise  
3 misdemeanors generally or just DV?  
4 DEPUTY PROBATION OFFICER NAGY: Just DV.  
5 JUSTICE KAY: Thank you very much.  
6 DEPUTY PROBATION OFFICER NAGY: Yeah. No  
7 problem.  
8 So, anyway, what I was going to say about the  
9 formal probation, as it is, if every judge could make --  
10 on a DV case -- could make sure that they put in the  
11 search and seizure and the no firearms as conditions of  
12 probation, then we in probation would have the right to go  
13 in and search and seize any weapon that, you know, we  
14 found.  
15 I think that's about it. And thank you very much  
16 for the opportunity.  
17 JUSTICE KAY: Not at all, thank you.  
18 Any questions? All right.  
19 Our last speaker is Judge Becky Dugan, now  
20 Supervising Judge of Family Law Department in the  
21 Riverside County Superior Court. Judge Dugan has the  
22 distinction of having expertise in every aspect of  
23 domestic violence, including family, juvenile and criminal  
24 matters and has served in all these departments of her  
25 court.

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1 HONORABLE DUGAN: I've been around a long time.  
2 I'll try to -- I will try to cut this short. I  
3 know we're running about a half an hour over and I did  
4 give you about my written --  
5 JUSTICE KAY: Don't worry about people catching  
6 planes.  
7 HONORABLE DUGAN: I understand that.  
8 I did want to mention though, one of the things  
9 that Rick was concerned about in the question that Judge  
10 MacLaughlin had. The temporary restraining order does not  
11 implicate the criminal defendant because it's made without  
12 prejudice and therefore, can't be used for any purpose.  
13 The OSC order, the permanent order is factual findings by  
14 the judge on a noticed hearing and does have Fifth  
15 Amendment implications.  
16 So they're always lobbying to continue the TRO  
17 because that's not with any prejudice and it can't be used  
18 against them. However, the downside of that and why I  
19 disagree with Rick is you can't make support orders at the  
20 TRO level. You can make custody, supervised visitation, et  
21 cetera, but you can't make support orders.  
22 So when Rick comes in and asks for six months to  
23 continue out his TRO, yes, the protective orders are in  
24 place but we're generally starving the victim because we  
25 haven't made any support orders. So that's -- the defense

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1 point of view is an obvious one and that's where the  
2 battle is, and that's the difference with the TRO. So I  
3 just wanted to clear that up.  
4 I'm only going to mention a couple of things that  
5 I mentioned in my -- what I considered most important --  
6 and maybe I missed it, guys. Is it in the recommendations  
7 that dedicated DV courts are the recommendation? Because  
8 I read it several times and --  
9 JUSTICE KAY: Yeah.  
10 HONORABLE DUGAN: Is it in there as a  
11 recommendation, a numbered recommendation?  
12 JUSTICE KAY: I think so.  
13 HONORABLE DUGAN: It should be and it should be  
14 in the family law section, the crim section. We all  
15 talked about it -- you've heard it all day long -- that  
16 consistency with dedicated judges who know the facts of  
17 the case, who see the same defendant over and over again,  
18 and yet I think it's omitted in the recommendations.  
19 We need to recommend very strongly in the task  
20 force that family law have dedicated domestic violence  
21 courts and criminal courts have dedicated domestic  
22 violence courts. I'd throw in juvenile except DV is  
23 number two in juvenile filing, so we cover practically all

24 of juvenile, so...  
25 But certainly fam and juv and -- I mean, fam and

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1 crim -- and it should be in there because -- for obvious  
2 reasons I think we've all heard today.  
3 I want to focus on what I consider the most  
4 dangerous thing we have done, and the thing that I'm  
5 really asking the task force to consider finding a way to  
6 fix as soon as we can. If you look at the CR160, which is  
7 the criminal protective order, it has a pre-printed  
8 section with a minimum mandatory language. That is the  
9 firearms relinquishment and the personal conduct  
10 restraints. It's pre-printed in the first two paragraphs.  
11 Then underneath that is a check the box, 100 yards stay  
12 away, sole legal and custody for the kids; you can add the  
13 kids, et cetera.  
14 What's happened across the state -- because  
15 criminal protective orders take precedence over any other  
16 order you've heard some of today -- if I'm sitting in  
17 family law as the bench officer and I'm running a  
18 dedicated DV in my family law and I see on my records that  
19 the parties have a criminal protective order in place,  
20 then one family law bench officer you heard from L.A.  
21 said, "I'm not issuing another one."  
22 That's generally good practice because if you put  
23 two CLETS orders in the system and the law enforcement  
24 officer is standing there and they have two and they don't  
25 match, they're flipped out. And they generally refer

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1 people back to court and they don't promote safety that  
2 way.  
3 In addition, the criminal protective order --  
4 because it's pre-printed -- I cannot tell you, because I  
5 train law enforcement all over the state as well -- they  
6 tell me the order is blank. There's nothing on the order,  
7 they say. Because it's the pre-printed line, which an  
8 amount of the boxes are left blank.  
9 And they literally tell me -- and not just them,  
10 but victims and perpetrators -- "There's nothing on the  
11 order, your honor. There's nothing here."  
12 So we need -- maybe we need to put the boxes  
13 back. I know why we took them out but maybe we need to  
14 put them back. But when you make the criminal protective

15 order supersede any other order, here's how it goes.  
16 Judge Leonard sits in the court I used to sit in,  
17 which is a dedicated criminal DV court. All felonies, all  
18 misdemeanors, there's 125 cases a day, at a minimum. So  
19 here's how it goes. "You plead guilty. You plead guilty.  
20 Here's the CPO, your honor." It's passed up to the judge  
21 by the D.A.  
22 The D.A. and the P.D. have agreed only to the  
23 personal conduct restraints. Only to that. Why? Because  
24 there's nothing to fight about now. It's mandatory. It's  
25 the mandatory minimum. It's imposed. Nobody even talks

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1 about the stay away orders. Everybody is just too busy,  
2 because if the D.A. asks for the stay away order, now the  
3 defense attorney wants a hearing, and there's 125 cases.  
4 So I'm sitting in Family. I flip up and see  
5 there's a CPO. That's all it says on her minute order.  
6 It says "CPO issued." And in family law I'm thinking I'm  
7 cool. They're protected. This is the big order. And  
8 when you get the actual order, the only thing is the  
9 personal conduct restraints. That's the only thing.  
10 Now, in my court I actually pull them. Because I  
11 want to know what's actually there. We have an image. We  
12 have the ability to do that. In Riverside, a lot of  
13 courts don't. When I see there's just personal conduct  
14 restraints, now here's my dilemma. It supersedes any  
15 other order. And I want to give full protection to the  
16 victim. She's come in and alleged facts on which I find I  
17 need to give her full protection. My order conflicts with  
18 her order. My order is the more protective order but the  
19 law doesn't speak to that now. It says the CPO prevails  
20 over any other order, when orders conflict.  
21 Now, the defense attorney is going to very  
22 cleverly argue that the CPO intentionally -- because it  
23 had a choice to give all those protections and didn't --  
24 conflicts with my order that wants to. Right? And the  
25 law enforcement officer again. Look, the defendant is

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1 saying, "I went to criminal court and they said I could --  
2 Judge Leonard said I can go home with her. I could go  
3 home. Look, look, my order just says "be nice." The "be  
4 nice" -- I call them "be nice" ones.  
5 Over in family law she's got there to wait, your

6 honor. He got kicked out, with a 100 yard stay away.  
7 She's given that to the cop. What's the cop going to do?  
8 This is really, really deadly dangerous. We need to go  
9 back to what we had before. The most restrictive order  
10 prevails. The most protective order prevails. Not the  
11 criminal order. Because the criminal orders tend to be  
12 the least protective now in the state. But the most  
13 protective order prevails.

14 So I'll end with that. The dedicated DV courts  
15 and the CPO has got to be fixed. You have my other  
16 comments. I realize when I wrote this, that some of them  
17 were out of the purview of our task force.

18 I do -- the Chief is laughing -- I do not want to  
19 pass up this opportunity. This is a tremendous  
20 opportunity. You're the Chief Justice. You also have, I  
21 believe, the ear of the legislature. They want to do the  
22 right thing and protect people, and some of this stuff  
23 they've done is simply not protective. It's just flat out  
24 dangerous.

25 So with that I'll answer any questions anybody

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1 has.

2 Okay. Thanks.

3 JUSTICE KAY: Thank you. All right.

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6 (PUBLIC HEARING TESTIMONY ON THE  
7 FOLLOWING PAGE.)

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1 JUSTICE KAY: We're going to in the interest of  
2 time, begin immediately with the members of the public who  
3 happen to include two professionals, a Deputy Long Beach  
4 City Prosecutor and Orange County Chief Deputy Public  
5 Defender who were not otherwise specifically invited.  
6 I'm going to ask you to keep your remarks  
7 particularly short. We are going to limit each speaker in  
8 the order that they signed up, to five minutes. That will  
9 be strictly enforced.  
10 Now, I also want to explain that you need to  
11 understand when making your remarks, that the Task Force  
12 is not a regulatory or investigatory body. We are unable  
13 to review or take action on individual cases. We have no  
14 such jurisdiction. That doesn't mean you can't talk about  
15 them, but don't expect us to do anything about them,  
16 because we cannot. We're interested in hearing your input  
17 regarding ways to make improvements to the overall  
18 administration of justice in these cases.  
19 All right. Our first speaker is Sharon Panion,  
20 Deputy Long Beach City Prosecutor.  
21 DEPUTY PROSECUTOR PANION: Thank you very much.  
22 Can you hear me?  
23 JUSTICE KAY: Yes.  
24 DEPUTY PROSECUTOR PANION: Thank you.  
25 I am Sharon Panion, I am a Deputy City Prosecutor

1 for the City of Long Beach. I have been so for the last  
2 10 years. I am part of a vertical prosecution unit. We  
3 handle all of the misdemeanor, domestic violence, child  
4 abuse and elder abuse cases that are filed in Long Beach.  
5 I am, in fact, in Judge Andrews' courtroom every day and  
6 she is probably sick of seeing me and thought that she  
7 could get away from me for a day by coming up here. But  
8 it didn't work.  
9 As I review the Draft Guidelines and the  
10 Recommended Practices, there is one area which is not  
11 addressed by you. And I understand that that is so  
12 because you are not a legislative body. But I do, as the  
13 last speaker, feel that you have an impact on the  
14 legislature. As I only do misdemeanors -- and that is  
15 because there is a jurisdictional split in Long Beach as  
16 there is in Los Angeles, where the City Attorney's Office  
17 handles the misdemeanors and the District Attorney's  
18 Office handles the felonies -- I cannot handle felonies.  
19 I can only file misdemeanors.  
20 The way the domestic violence laws are currently  
21 stated, if a suspect has two or more convictions for a

22 domestic violence within the prior seven years, the  
23 offense is commonly referred to as a wobbler, which means  
24 it could be filed either as a felony or a misdemeanor.  
25 If the case is filed as a misdemeanor, the

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1 defendant is subject to a maximum sentence of one year in  
2 jail. If the case is filed as a felony, the defendant is  
3 subject to a maximum in the state prison for a maximum of  
4 two, three or four years.  
5 The problem that I have seen repeatedly over the  
6 years, and I know that Judge Andrews will confirm this, is  
7 that there is nothing in the Penal Code that requires a  
8 case to be filed as a felony after a certain number of  
9 misdemeanor convictions. I have personally handled cases  
10 where the defendant has six or eight or ten or more  
11 misdemeanor convictions involving conduct with the same  
12 victim. There is no requirement that at some point in  
13 time the repeated conduct must be filed as a felony. So  
14 the only alternative is for misdemeanor after misdemeanor  
15 after misdemeanor case to be filed.  
16 With the Los Angeles Sheriff's current early  
17 release policy, a defendant who is sentenced to the  
18 maximum on a misdemeanor which is a year in jail, in fact,  
19 he will be released after only a few days in custody.  
20 That is a terrible, terrible, terribly distressing  
21 situation.  
22 When he is released he will be able to return to the  
23 victim and repeat the abusive behavior. Even the issuance  
24 of a stayaway protective order is ineffective in  
25 protecting the victim, because the repeated violations of

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1 a protective order can also be continually filed as  
2 misdemeanors. And then he may be sentenced to another  
3 year in jail. And if he is sentenced to another year in  
4 jail, he will, in fact, be out of jail in another few  
5 days, able to return home and repeat the conduct.  
6 Although the repeated abusive conduct and the  
7 repeated protective order violations can be filed as  
8 felonies under certain conditions, there is nothing that  
9 says, in effect, "Enough is enough, this time it will be  
10 filed as a felony." There is nothing that tells a  
11 defendant that when it's his third or fourth or fifth time  
12 beating up the same woman, that the case will be filed as

13 a felony and that he will be subject to doing time in  
14 state prison.  
15 Several years ago the state legislature got  
16 serious about penalties for people who were repeatedly  
17 convicted of driving under the influence of alcohol.  
18 Through efforts of organizations such as MADD and others,  
19 states recognize that drunk drivers posed a serious threat  
20 to the safety of our communities. State laws were enacted  
21 that made four driving under the influence cases, even if  
22 there were no physical injuries, a mandatory felony with  
23 state prison penalty. Wow. All of a sudden drunk driving  
24 is a serious felony. It is a potential -- it can have  
25 potentially serious consequences. Even petty theft cases

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1 with prior convictions now may be treated as felonies.  
2 The same shift in attitude must take place with  
3 respect to domestic violence cases. Domestic violence is  
4 a serious crime that affects each of us. Steps must be  
5 taken to ensure that at some point repeated domestic  
6 violence must be filed as a felony, with felony  
7 consequences. It is the only way to knowledge the  
8 seriousness of the crime and to provide real safety for  
9 the victims.  
10 JUSTICE KAY: You have about one minutes.  
11 DEPUTY PROSECUTOR PANION: Thank you. I'll be  
12 done.  
13 This Task Force recommends under its No. 66 of  
14 its Recommendations, graduated sanctions for probation  
15 violations. I'm asking this Task Force to take that  
16 recommendation one step further. I'm asking this Task  
17 Force to acknowledge that as long as a domestic violence  
18 incident can be filed as a misdemeanor when it is the  
19 fifth or 10th or 20th violation, that there is no just  
20 injustice.  
21 I'm asking this Task Force to encourage and  
22 support legislation that would make a third or fourth or  
23 whichever number is appropriate, a mandatory felony  
24 filing. After a certain number of misdemeanor  
25 convictions, the discretion to continue to file future

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1 cases as misdemeanors should not be an option.  
2 The current system of filing and sentencing  
3 offers no real hope to a victim that the system can offer



4 her any real protection, unless laws are changed so that a  
5 third or fourth or fifth case is a mandatory felony.  
6 A victim faces a potential lifetime caught in the  
7 revolving door of the misdemeanor system. I'm asking for  
8 your support for these legislative changes.  
9 Thank you.  
10 JUSTICE KAY: Thank you.  
11 Our next speaker is Thomas Avlina, Orange County  
12 Chief Deputy Public Defender.  
13 CHIEF DEPUTY PUBLIC DEFENDER AVLINA: Thank you  
14 for the opportunity to be heard.  
15 Both my learned colleague and Gary Windom  
16 mentioned the Fifth Amendment issue. I believe that it  
17 would be within the purview of this committee to make a  
18 recommendation to the legislature that perhaps legislation  
19 could be passed to grant use immunity for statements given  
20 that could violate the Fifth Amendment. I refer the  
21 committee to a 9th circuit case, U.S. versus Faechao. The  
22 citation for that is 418 5th 3rd 1073. And that case  
23 dealt with an Argon Statute and Fifth Amendment issues.  
24 It also referred to two U.S. Supreme Court cases from the  
25 1970s, Hanes versus United States, 390 U.S. 85. That led

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1 to a modification to the national firearms act, which  
2 granted use immunity on the federal level. I don't know  
3 what the current state of the federal legislation is --  
4 but that led to the enactment of 26 United States Code  
5 Section 5848 and then in United States versus Freed FL,  
6 401 U.S. 601. They validated that use immunity statute.  
7 So those would be the rationale for recommending to the  
8 state legislature that use immunity in California could  
9 get us past the problem with the Fifth Amendment issue in  
10 trying to get accurate information so that those weapons  
11 actually are turned in.  
12 I also would like to talk about some of the  
13 unintended consequences that are invited in the materials  
14 that Bobby Welling was kind enough to provide me last  
15 week.  
16 Again, my learned defense counsel talked about  
17 the restraining order situation when the victim doesn't  
18 want a restraining order. In the civil side when the  
19 person seeking the restraining order is asking for it, we  
20 can assume that that person wants the restraining order.  
21 One of the common things that happens that Deputy  
22 Public Defenders that report to me tell me in the DV  
23 court, is that they will get a call from the victim,  
24 saying, "I don't want a restraining order" or "I want my  
25 restraining order restricted to a no violent contact from

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1 a no contact order." We haven't really talked about the  
2 distinction, but I think the distinction is important.

3 And I've tried to talk to the District Attorney  
4 about it and they won't talk to me. And I've tried to  
5 talk to the Victim's Advocate and they tell me I'm a  
6 victim and I shouldn't be doing this. And what do I do?

7 And we're in the uncomfortable position of  
8 saying, "Well, we represent your husband" -- or in some  
9 cases "your wife" -- "and we are not in a position to  
10 advise you but you need to go to court and tell the  
11 court."

12 I think what I need to urge this Committee to do,  
13 there seems to be a drum roll for this Committee's agenda  
14 is to make sure that these poor victims who don't know how  
15 victimized they are, need the help of the courts. And I  
16 think a lot of that is valid, but I think there has to be  
17 balance. Gary Windom talked about balance.

18 The victims complain to us that they aren't being  
19 heard. Some victims. And I asked the Deputy who I  
20 discussed this with, "Well, is that an isolated  
21 situation?" He said, "You'd be surprised at how many  
22 cases the victim is calling us, trying to get us to undo  
23 what the courts are doing."

24 So one of the laws of unintended consequences  
25 might be that if this process isn't receptive to the

1 victims -- both in the nature of encouraging them to get  
2 what they need to prevent ongoing violence but to also  
3 give them what they need as far as reducing the level of  
4 protective orders -- what you'll have, I'm afraid, is that  
5 for some victims they will be so traumatized by the system  
6 that they will not make a report to the police if and when  
7 unfortunately the same event occurs again.

8 So what I suggest by way of a recommendation is  
9 that that this Committee ask that a study be conducted to  
10 survey victims one or two years or maybe six months after  
11 the court process is over, to find out what their reaction  
12 was to what happened in the system. Because one of the  
13 problems that I foresee is that what comes out of this  
14 whole process may be overreaching and the assumption that  
15 many in the system have that the victim is, in fact,  
16 powerless in the situation and really needs the  
17 intervention of the government -- as was mentioned again  
18 by my colleague -- we may overreach and we may end up  
19 alienating some victims.

20           So one recommendation you can make is for a  
21 follow-up study of the victims to find out exactly what  
22 the effect of this process -- particularly the specialized  
23 DV courts -- what the effect of their process is on them.  
24           I also think that there should be a  
25 recommendation for there being a "keep the peace" order,

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1   formula or some way in which defendants can get their  
2 property. That was also mentioned by a colleague, so I  
3 won't go too much into that.  
4           I also hear costs and fees are being urged to  
5 increase the vigilance in getting fees from --  
6 particularly our clients -- and what I can tell you is  
7 that there are a certain number of situations where the  
8 lack of financial resources in the household is a source  
9 of argument, is a source of confrontation or conflict and  
10 that leads to domestic violence.  
11          And you lay on top of that, a stay-away order  
12 where now the couple has to maintain two households, and  
13 you add on that fees and other things, one of the  
14 unintended consequences may be that we're exacerbating the  
15 very core issue that caused the problem in the first  
16 place.  
17          And again, there are some batterers that are  
18 serial batterers that need to be dealt with harshly.  
19 There are other people who are involved in a batterer  
20 situation that may be an occasional or a one-time event,  
21 and we need to be able to distinguish between those kind  
22 of cases.  
23          Unless there are questions, I thank you.  
24          JUSTICE KAY: Thank you very much. We'll next  
25 hear from Laura Frye.

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1           MS. FRYE: Good afternoon, your honors.  
2           I feel like I am the 16th seed going up against  
3 the first because it's 3:40 you've got planes to catch.  
4 Oh boy.  
5           JUSTICE KAY: Sorry.  
6           MS. FRYE: Okay. I'm an attorney with the Legal  
7 Aid Foundation of Los Angeles. And our office has -- well  
8 our offices have about eight attorneys. Between us we  
9 have about 80 years of experience in representing victims.  
10 That is to say that probably 95 percent of our clients are

11 victims of domestic violence. Though not just in DVPA  
12 proceedings, in family law proceedings as well.  
13 And to answer Judge Kopp's question. No, the  
14 fact that we have 80 years of experience doesn't mean we  
15 understand the Los Angeles County. And in terms of its  
16 services, it is just too much, too big, too spread out.  
17 The idea of having one court where everybody went, on the  
18 one hand is very attractive; on the other hand, people  
19 might have to drive two hours to get there. That's Los  
20 Angeles.  
21 Also, in terms of why we want to talk to you. I  
22 think if I read my Lexis correctly, there are only seven  
23 published appellate decisions in the last 10 years on the  
24 DVPA statutes. An attorney from our office, one attorney  
25 filed both of those. And we see the seeds of those two

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1 decisions. Monteroso versus Moran and Quintana versus  
2 Kehosa, I think. In your recommendations we are very  
3 pleased to see it because those were, we thought, really  
4 important cases to bring.  
5 On the issue of the criminal and family law  
6 restraining matters raised by Eve Sheedy and Judge Dugan.  
7 Yeah, we're worried about that too. We had another appeal  
8 up. It got mooted out. There were criminal, "be nice"  
9 orders. The DVPA judge said, "No, I can't issue  
10 anything."  
11 Our appeal on that issue got mooted out when he,  
12 guess what, re-offended. Battered again. And that's when  
13 more serious orders were entered. So, yeah, we feel that  
14 that is an important issue to raise.  
15 Moving on. I have another central point. I have  
16 a lot of central points. I'm really glad to see your  
17 opening sentence of your DVPA section, "Domestic violence  
18 restraining orders issued in family court can be a  
19 powerful tool to deter violence. Secure, safe child  
20 custody and visitation arrangements, and provide temporary  
21 financial stability." Not in a lot of courts in Los  
22 Angeles. And I can't talk about that because we have a  
23 pending appeal on that issue.  
24 But, yes, it's something that -- I actually don't  
25 see anywhere in here except for the financial stability,

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1 the custody order part that you can -- should make custody

2 orders, in DVPA proceedings.  
3 Two requests for clarification.  
4 Am I speaking loudly enough?  
5 Good.  
6 "Temporary judges." Yes. That's an important  
7 issue. We have grave concerns about that.  
8 "Query." Are you referring to commissioners who  
9 have dedicated DV calendars and handle them for years at a  
10 time? Or, okay, the pro tem, judge for a day. Our  
11 understanding is that in Los Angeles County these folks  
12 may be certified family law specialists, which means they  
13 know a lot of family law. However, the training they  
14 receive is -- we have heard -- one hour, in terms of  
15 domestic violence. To represent domestic violence  
16 victims, in terms of County funding, I had to go to 40  
17 hours training. I think that's actually a pretty good  
18 number.  
19 Also, "Past acts." You need to be clear what you  
20 mean. I think there's been some confusion today among  
21 people commenting what you mean. I think it's a reference  
22 to the "there needs to be an act of physical violence  
23 within the last month. If there isn't, there had better  
24 be a serious act of physical violence in the past with  
25 serious threats currently."

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1 And that trips off the tongue because it said  
2 repeatedly every day by people preparing restraining  
3 orders to be evaluated -- preparing requests for  
4 restraining orders to be evaluated by judges.  
5 I was very happy to see that that one month  
6 requirement or encouragement to consider disappeared from  
7 the court info website. It used to be on there. And I  
8 was very glad to see that it no longer was. But it is  
9 still very much alive, in at least Los Angeles courts.  
10 "Assistance for parties." Broadly, numbers 5 and  
11 6. Obviously what I do is individual representation,  
12 though I also do a ton of counsel and advice. I'm  
13 bringing this up before this Body because the  
14 administrative office of the courts is also a source of  
15 funding. And the word "self-help," yes, it is an  
16 important part of a continuum of services for domestic  
17 violence victims. But the most vulnerable people are  
18 going to be the ones who are not served by self-help. And  
19 as you've probably heard a few times today, there are  
20 limited dollars to go around. And when dollars go to  
21 self-help, they flow away from other services.  
22 And the people who are going to be hurt are the  
23 person traumatized by severe violence. She's barely  
24 coherent even when someone with years of experience is  
25 interviewing her, not asking her to do anything. The

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1 person who suffered long-term abuse who doesn't understand  
2 how telling the batterer's pattern of controlling behavior  
3 is. The person who's depressed. Facing those -- I  
4 haven't counted but probably 46 pages -- she doesn't  
5 understand that some of those are orders that she doesn't  
6 need to complete. The person who doesn't write down in  
7 her declaration -- and I have to say, your forms, AOC's  
8 forms -- the Judicial Council, excuse me -- are really  
9 good. There's been so much thought. So much effort.  
10 There's been so much good work. But you're never going to  
11 be able to write the declaration for folks. That's what  
12 really talking about. And that's where self-help is not  
13 going to do it.

14 She may not write down he was arrested twice for  
15 domestic violence. You know, he didn't hit her for a  
16 couple years after that so that probably doesn't matter,  
17 does it? The person who's literally terrified of leaving  
18 something out, so she writes 10 single spaced pages. As  
19 judges, I know you've seen them. The person who writes  
20 almost nothing because she figures you're the judge and  
21 you're going to do what's right. And you're going to know  
22 what that is. The person who can't write.

23 Number 8, "Collaboration with other service  
24 providers." Money, again. Los Angeles did have a program  
25 for safe exchange. The Carson Sheriff's Station and the

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1 Temple City Sheriff's Station. A few weeks ago -- and  
2 this is Los Angeles in action -- I had heard rumors that  
3 they weren't functioning. A clerk in a family law  
4 courtroom called up, "Well, Carson City's phone number  
5 is" -- "Carson's Sheriff's Department" -- "the line for  
6 the safe exchange is disconnected" and she found someone  
7 in Temple City at the Sheriff's Station who said it's been  
8 discontinued, for lack of funding. That's it. And that's  
9 L.A. County. For safe exchanges. There are safe  
10 visitation programs. Stress stretched to the max.

11 JUSTICE KAY: Miss Frye, I have to ask you to try  
12 to wrap it up in then ext minute.

13 MS. FRYE: I will.

14 JUSTICE KAY: If you can.

15 MS. FRYE: I will.

16 Under "Court leadership." Training, working with

17 law enforcement. Remember, for instance, LAPD is losing a  
18 lot of people. All those people you trained and who  
19 really got it. God, it's a constant battle. Keep it up.  
20 And they listen to what you guys say. They don't really  
21 listen to what I have to say.  
22 "Statistics." Keep the statistics. They'll tell  
23 you things. I poked around. I discovered that, in fact,  
24 there were 424 domestic violence DVPA orders requested in  
25 July -- excuse me -- January of this year, downtown

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1 courthouse alone. 424, just by poking around, looking for  
2 numbers. But we need more information than that. You  
3 need more information than that.  
4 Thank you very much. I hope that you go forward  
5 and continue to do the great work that's already evident  
6 here.  
7 Thank you.  
8 JUSTICE KAY: Thank you. We'll now hear from  
9 Patricia Mulkahey.  
10 MS. MULKAHEY: First of all, I'm just a concerned  
11 citizen of the United States and I promised my daughter  
12 that I would seek justice for her. She was abused from  
13 the age of 10 to 12. I'm here today to ask the Judicial  
14 Council of California, why is it the DCSS can search our  
15 children and parents' medical records without a search  
16 warrant? The Patriotic Act is not what our American  
17 patriots have fought and die for. To allow our Bills of  
18 Rights to be nullified without j-u-d-i-c-i-a-l invites  
19 tyranny -- that's t-y-r-a-n-n-y.  
20 The Attorney General has been handed unfiltered  
21 power to wiretap, search, jail and invade our most sacred  
22 rights to privacy. The government must not be allowed  
23 without probable cause or warrant to snoop on our  
24 communications, our medical records, our library records  
25 and our student records. And that that also goes to the

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1 Department of Children's Services.  
2 For my daughter, she's a minor, so she can not be  
3 here to speak to your honors today. But she was sexually  
4 abused from the age of 10 to 12. And I promised her that  
5 I would be a voice for her, that I would speak for her.  
6 I had to give a person by the name of Attorney  
7 General Bill Lockyer a -- what is this called? It's

8 called a consumer complaint form. Basically you have to  
9 go up there. You have to fill it out. You have to date  
10 it. And I would submit this to you guys today so you have  
11 a look at -- you know, overlook it. And the first time I  
12 submitted it was 4-24-02. The next time was 9-3-03.

13 I did some investigation work. I had to hire a  
14 private attorney -- not a private attorney -- a P.I.,  
15 which is a private investigator. And I asked him to run a  
16 background check on the head of the Department of Children  
17 and Family Services. He gave me that discovered detail.  
18 What I got back was -- her name was Anita Bach. She's a  
19 former director of the Department of Children and Family  
20 Services. I think she had to resign. But here what I  
21 have is that she was using two Social Security numbers.  
22 One belonged to a dead man and his Social Security Number  
23 was 499-20-4376. Her actual Social Security Number is  
24 570-41-7680.

25 When I ran into the FBI agent -- his name is

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1 Keith Gould -- he looked at the discovery detail that I  
2 gave him and he informed me what she did was illegal. The  
3 FBI agent said that they wanted all the discovery detail.  
4 That it has ripped our family apart, because as a mother I  
5 could not protect her for the abuse that she had to go  
6 through with the Department of Children and Family  
7 Services.

8 Our children are not meant to be cash cows. And  
9 how can you tell your 12-year old that was abused from the  
10 age of 10 to 12 through the County -- supposedly they're  
11 here to help us. Like that one guy said. That's one of  
12 the biggest lies. He said, "I'm here from the government  
13 to help you." Our children are not meant to be cash cows.  
14 And it rips my heart apart that I could not protect her  
15 from the sexual abuse that she went through in their care.

16 I had to write -- I had to call Congress, because  
17 there were new bills that were passed, that basically says  
18 that if you don't get your kids back in a year and-a-half  
19 to two years, you lose them forever.

20 It cost our family over \$130,000 to fight the  
21 system. We still lost.

22 And I just want to thank you. I know that I only  
23 have five minutes, Honorable Kay. But thank you very much  
24 for letting me speak here today. If it would be possible,  
25 give you an assistant request form?

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1 JUSTICE KAY: Well, I'm not sure what you're  
2 asking me but you can file -- you can give us any --  
3 MS. MULKAHEY: It's a -- constitute an assistant  
4 request form.  
5 I'm not with the, you know, Department of  
6 Justice. I'm not an attorney. The only thing I am is a  
7 concerned citizen. And like I said, I promised my  
8 daughter that I would seek justice for her, because she's  
9 a minor so she cannot be here right now.  
10 JUSTICE KAY: All right.  
11 +MS. MULKAHEY: Thank you very much for letting  
12 me speak my time. And hopefully I didn't go over my five  
13 minutes.  
14 JUSTICE KAY: Thank you, Ms. +Mulkahey.  
15 Our next speaker is -- it looks like Greg  
16 Kisling, but that's just the way I'm reading his  
17 handwriting.  
18 Is there a Greg Kisling here?  
19 A VOICE: Risling?  
20 JUSTICE KAY: Risling?  
21 No? All right.  
22 Last we have -- and I'm going to have trouble  
23 with this name too -- Ard Athenian, is it or Atherian?  
24 MR. ATHERIAN: Atherian.  
25 JUSTICE KAY: All right.

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1 MR. ATHERIAN: Hello. Well, I want to  
2 acknowledge that I'm aware that I'm in front of a  
3 distinguished panel of judges who determine more or less  
4 how our conflicts are resolved to the best public  
5 interest.  
6 I was asked to be here by my organization to see  
7 whether the male side, the man side is represented, is  
8 covered in this meeting.  
9 I am sorry to say I didn't hear anybody speak  
10 about the plight of men, such as mine, who experienced 12  
11 years of physical abuse in a wife whose mode of  
12 communication was slap on the side, push over the head, a  
13 kick from the earlobe, both on me and my children.  
14 For 12 years I have sought those people who were  
15 here before, the Legal Aid people, from the Buhai Center,  
16 for Lebanon Queen, from CPS, and all I would get, "But we  
17 don't serve males." There was no place that I could go,  
18 that would at least record or recognize that there is such  
19 a thing as domestic violence perpetrated by females over  
20 males.  
21 Wherever you go there is engineers, such as I.  
22 There is people who are university graduates, working in  
23 the city. At least of them are males. How is it that all

24 of a sudden when you go to a divorce court, when you go to  
25 a DV court, it's 95 percent or more it's females who are

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1 victims and males are the perpetrators? How could this  
2 ever be?  
3       Was there any authoritative study that came to  
4 the conclusion that domestic violence is perpetrated by  
5 males over females? No. There's a lot of ideologically  
6 driven statistics, bogus numbers that have apparently seen  
7 their day during the past 40 years and have become law and  
8 they do not deserve to continue in that status.  
9       It is all agreed by all people who study domestic  
10 violence that this is not a gender quality. This is a  
11 social environment quality. It can affect females as well  
12 as males. How is it that suddenly your courts punish and  
13 deprive all males of every means of sustenance they have?  
14 How is it that you don't recognize, you judges don't  
15 recognize that you have created a system where the wife's  
16 lawyer tells the wife, "If you don't lie about this, you  
17 get nothing. He'll win all. If you lie about it, he'll  
18 get nothing. You'll get everything." Do you recognize  
19 that this reality exists in this day and age and it is  
20 your creation? The creation of the legislature? The  
21 creation of ideologically driven factions in our society  
22 and organizations.  
23       And all those people who paraded here who are  
24 supposedly victim advocates who get their money and their  
25 livelihood and their self-interest is very much at stake

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1 and very much reliant, dependent whether this kind of  
2 bogus public policies continue to exclude a segment of our  
3 population from any constitutional protection, from  
4 attack, from the courts, from the judges, from people like  
5 them, who would like to see every male automatically go to  
6 jail, automatically go to anger management. Do I need  
7 anger management? I think my wife needed angry  
8 management, but I had to go through it.  
9       Have I ever shaken my children? No. There's no  
10 evidence. Without any evidence, the court orders come and  
11 with the court orders, do not even claim that somebody  
12 claiming this sort of acts against my children or against  
13 my wife. They say "cease and desist." I have already  
14 done those things.

15 I'm asking this court to start recognizing to  
16 serve both segments of the public, the male and the  
17 female. Not just the female. That has been the politics  
18 ideology of the past 40 years that has devastated 25  
19 million children. Left them without fathers. 40 million  
20 families broken, for no other reason other than you make  
21 it easy for ill-intentioned people, criminal people to  
22 come and prevail in your court of law against somebody  
23 who's been nothing but responsible, recipient of all the  
24 patient abuse that he has just endured, just to go to  
25 sustain a marriage that should have been failed perhaps a

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1 long time ago.  
2 That's the message that I have read so many, so  
3 many legal scholars who urge if the government is not  
4 going to do something, well, it better not do. In this  
5 case all organizations, all legal scholars that I've heard  
6 and I've read, this woman -- if there is a woman that is  
7 saying "I am being victimized by my husband" in any kind  
8 of a force situation, let there be immediate action.  
9 Separate them.  
10 But why do you need to tie all their income? All  
11 their assets? All their children? All their house?  
12 Everything? Why is this needed? If it's not for prurient  
13 financial reasons, let's split the root between us and let  
14 those guys suffer because apparently they haven't taken  
15 particular action. They haven't organized. They haven't  
16 raised their voices yet.  
17 That's all I've got to say, your honors.  
18 JUSTICE KAY: Thank you very much.  
19 All right. On behalf of the Task Force, I'd like  
20 to thank all of you who have participated in these  
21 proceedings, both professional and lay speakers.  
22 We consider that part of our charge is to  
23 identify the needed system-wide improvements in order to  
24 drive the resources that can institutionalize best  
25 practices. Our proposals are developed mindful of but not

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1 constrained by budgetary limitations.  
2 Again, thank you very much. This meeting is  
3 adjourned.  
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5 (PROCEEDINGS CONCLUDED.)

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REPORTER'S CERTIFICATE

I, Lori Anastasiou, a Certified Shorthand  
Reporter No. 4345 in the State of California, do hereby  
certify:

That the foregoing proceedings were taken before  
me at the time and place herein set forth; that a verbatim  
record of the proceedings was made by me using machine  
shorthand which was thereafter transcribed under my  
direction; further, that the foregoing is an accurate  
transcription thereof.

I further certify that I am neither financially  
interested in the action nor a relative or employee of any  
attorney of any of the parties.

IN WITNESS WHEREOF, I have hereunto subscribed my  
name this \_\_\_\_ of \_\_\_\_\_, 2007.

---

Lori Anastasiou  
CSR No. 4345

